

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. W-1297, SUB 14

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	
MRT-1, LLC,	)	
	)	
Complainant	)	ORDER DENYING MOTION FOR
	)	SANCTIONS, RESCHEDULING
v.	)	HEARING, AND ESTABLISHING
	)	NEW PROCEDURAL GUIDELINES
Harkers Island Sewer Company,	)	
Respondent	)	

BY THE PRESIDING COMMISSIONER: This is a complaint proceeding between MRT-1, LLC (Complainant or MRT)<sup>1</sup> and Harkers Island Sewer Company (Respondent). The Complaint was filed on May 2, 2019.

**PROCEDURAL BACKGROUND**

On December 18, 2020, the Commission issued an Order Scheduling Hearing, Establishing Procedural Schedule, and Adopting Discovery Guidelines. That order required, among other things, that the direct testimony and exhibits of Respondent be filed on or before Monday, March 29, 2021, and required that the rebuttal testimony and exhibits of Complainant be filed on or before Monday, April 12, 2021. By the same order, the Commission scheduled this matter for hearing on Tuesday, April 27, 2021.

On March 29, 2021, the day Respondent was required to file its direct testimony and exhibits, Respondent instead filed a motion seeking additional time to make said filings. On March 30, 2021, the Commissioner granted the motion and issued an order extending the deadline for Respondent to file direct testimony and exhibits until Friday, April 2, 2021, on the express condition that a full and complete copy be provided to MRT's counsel via email no later than 5:00 pm on Friday, April 2, 2021<sup>2</sup>. The Commission also extended the time for Complainant to file rebuttal testimony and exhibits until Friday, April 16, 2021.

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<sup>1</sup> MRT-1, LLC was substituted as Complainant by Commission Order dated October 22, 2020.

<sup>2</sup> Because Friday, April 2, 2021, was a state holiday, it was not possible that the Respondent's anticipated filings could be available to the Complainant or the public via the Commission's website, until Monday, April 5, 2021. Therefore, and as explained further in the order, the Commission required Respondent to provide a full and complete copy of its filing to MRT's counsel via email no later than 5:00 p.m. on Friday, April 2, 2021.

Respondent filed its direct testimony and exhibits with the Commission on April 5, 2021.

On April 5, 2021, Complainant filed a Notice and Motion for Sanctions stating that Respondent's testimony and exhibits were not timely served on Respondent as ordered and requesting sanctions for Respondent's failure to comply with the Commission's March 30, 2021 Order. In addition to the request for sanctions, Complainant also included a request for an extension of time to respond to Respondent's late filed testimony equal to that taken by Respondent.

On April 9, 2021, the Commission issued an order extending the time for Complainant to file rebuttal testimony and exhibits until Tuesday, April 20, 2021, and finding that the remaining issues raised in Complainant's Motion for Sanctions were not yet ripe for decision.

On April 14, 2021, in response to filings made by Complainant, Respondent indicated that counsel did not comply with the Commission's Order to serve direct testimony and exhibits on the Complainant by 5:00 p.m. on April 2, 2021, because counsel and his law office were observant of the Good Friday Easter holiday.

On April 16, 2021, the Public Staff filed a Notice of Intervention<sup>3</sup>, Mediation, and Request for Continuance in Complaint Proceeding. In its filing, the Public Staff indicated that it joined with the other parties in requesting a continuance of the hearing from April 27, 2021, to allow time for the mediation, and would prefile recommendations, cross examine witnesses and file a proposed order.

On April 19, 2021, the Commission issued an order suspending the then current procedural schedule, continuing the hearing scheduled for April 27, 2021, and requiring the Public Staff and the parties to file a joint status report regarding the mediated settlement discussions and the likelihood that the matter would proceed to hearing.

On June 2, 2021, the Public Staff filed a report indicating that mediation had not resolved the dispute and that an evidentiary hearing would be necessary.

Subsequently on June 15, 2021, the Public Staff filed a request that this proceeding be held in abeyance until August 8, 2021, to allow Respondent additional time to complete ongoing discussions regarding the possible sale of the utility to one of several larger Commission-regulated wastewater public utilities.

On June 16, 2021, the Commission issued an order holding the proceeding in abeyance until further order of the Commission and requiring the Public Staff and the

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<sup>3</sup> The Public Staff's intervention is recognized pursuant to N.C.G.S. § 62-15(d) and Commission Rule R1-19(e).

parties to file with the Commission joint or separate reports on or before August 11, 2021, updating the status of efforts to find a resolution of the issues raised by the Complaint.

On September 14, 2021, the Public Staff notified the Commission that the Respondent's discussions regarding a possible sale of the utility were not successful and requested that an evidentiary hearing be scheduled in this matter.

### **MOTION FOR SANCTIONS**

Regarding the Motion for Sanctions, the Respondent was granted an extension of time to file its direct testimony and exhibits until Friday, April 2, 2021, on the express condition that a full and complete copy be provided to MRT's counsel via email no later than 5:00 pm on Friday, April 2, 2021. At that time, the Commission required that the Complainant have the Respondent's direct testimony and exhibits in hand to provide the Complainant with the same number of additional days afforded the Respondent by the allowance of Respondent's request for an extension of time to comply with the Commission's initial scheduling order. Furthermore, the Commission's decision took into consideration the Commission's desire to have the hearing on the date scheduled. The Respondent missed that deadline and did not provide Complainant with its direct testimony and exhibits until the following Monday, April 5, 2021. After accepting the portion of the Commission's order granting an extension of time to file Respondent's testimony and exhibits with the Commission, but failing to comply with the portion of the order which conditioned the extension of time on serving Complainant so that Complainant would have the benefit of the testimony over the Easter weekend, the Respondent later explained in a filing made on April 14, 2021 that he and his office staff were unable to meet the deadline due to the observance of the Good Friday Easter Holiday. The Presiding Commissioner appreciates that counsel and his law office observed the Good Friday state holiday and infers from the statement of observance that counsel's law office was closed from April 2, 2021 through April 4, 2021. However, the Commission frowns upon self-help in contravention of a standing order of the Commission. When counsel received the Commission's order and realized he would not be able to comply, it was incumbent upon him to explain his situation to the Commission and seek relief before missing the Commission-imposed time of service. Having not met the Commission's condition, the Respondent's testimony and exhibits were not timely filed.

However, as a result of Respondent's missed deadline, Complainant was originally provided an extension of time until Tuesday, April 20, 2021, to file rebuttal testimony and exhibits. Subsequently, by order dated April 19, 2021, the hearing scheduled for April 27 was continued and the procedural schedule was continued. Thus, Complainant has had additional time to prepare rebuttal testimony and exhibits which can now be informed by any information brought to light during mediation.

Based on the foregoing, the Presiding Commissioner finds that Complainant has not been harmed or inconvenienced by Respondent's delay and failure to comply with the order of the Commission and that the direct testimony and exhibits filed on behalf of the

Respondent will be treated as if timely filed. Accordingly, the Complainant's Motion for Sanctions is denied; however, Respondent is hereby admonished to seek relief from the Commission before failing to comply with the Commission's orders.

### **HEARING AND PROCEDURAL SCHEDULE**

Based on the foregoing and the current status of this matter, the Presiding Commissioner finds good cause to schedule this matter for hearing and establish a procedural schedule including requiring the parties to file testimony in advance of the hearing, as ordered below.

IT IS, THEREFORE, ORDERED as follows:

1. That a hearing shall be held in Commission Hearing Room 2115 in Raleigh on Tuesday, December 14, 2021, at 1:00 p.m., for the purpose of receiving evidence from the parties regarding the complaint filed in this proceeding and will continue as required for testimony and cross-examination of expert witnesses for the parties and other intervenors;
2. That the time period for filing a petition to intervene in this matter expired on February, 15, 2021;
3. That the time period for propounding new discovery requests expired on February 19, 2021;
4. That rebuttal testimony and exhibits of Complainant shall be filed on or before Tuesday, October 19, 2021;
5. That the Public Staff shall file its recommendation on or before Monday, November 29, 2021;
6. That Complainant's Motion for Sanctions is denied;
7. That all parties filing supporting exhibits in Excel format shall provide the Commission Staff electronic versions of the exhibits filed in native Excel format via email at NCUCexhibits@ncuc.net, including all of the supporting tabs and formulas, within three days of the filing of such exhibits; and that all parties filing exhibits and workpapers that include tables of numbers and calculations shall provide each other, the Commission, and the Public Staff an electronic version of all such exhibits and workpapers with formulas intact and full functionality enabled;
8. That the Respondent shall consult with all other parties and file, no later than Tuesday, December 7, 2021, a list of witnesses to be called at the expert witness hearing, the order of witnesses, and each party's estimated time for cross-examination.

If the parties disagree with Respondent's filing, the remaining parties shall, no later than Friday, December 10, 2021, make a filing indicating their points of disagreement;

9. That this Order shall be served on all parties by email, delivery confirmation requested; and

10. That the Commission may issue a subsequent order addressing whether the hearing will be held remotely via Webex depending on matters related to the coronavirus pandemic.

ISSUED BY ORDER OF THE COMMISSION.

This the 13th day of October, 2021.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink, appearing to read "A. Shonta Dunston".

A. Shonta Dunston, Chief Clerk