



**NORTH CAROLINA  
PUBLIC STAFF  
UTILITIES COMMISSION**

March 26, 2024

Ms. A. Shonta Dunston, Chief Clerk  
North Carolina Utilities Commission  
4325 Mail Service Center  
Raleigh, North Carolina 27699-4300

Re: Docket No. W-1333, Sub 5 – Application by Currituck Water and Sewer, LLC for a Certificate of Public Convenience and Necessity to Provide Water and Sewer Utility Service in Currituck County, North Carolina, and for Approval of Rates

Dear Ms. Dunston,

Attached for filing on behalf of the Public Staff in the above-referenced dockets is the Public Staff's Motion to Show Cause and Exhibits. Exhibit A and Exhibit D contain confidential information and will be provided to those parties that have entered into a confidentiality agreement.

By copy of this letter, I am forwarding a redacted version to all parties of record by electronic delivery.

Sincerely,

Electronically submitted  
/s/ Reita D. Coxtton  
Staff Attorney  
[reita.coxton@psncuc.nc.gov](mailto:reita.coxton@psncuc.nc.gov)

cc: Parties of Record

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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Public Staff Motion has been served on all parties of record or their attorneys, or both, in accordance with Commission Rule R1-39, by United States Mail, first class or better; by hand delivery; or by means of facsimile or electronic delivery upon agreement of the receiving party.

This the 26th day March, 2024.

Electronically submitted  
/s/ Reita D. Coxton  
Staff Attorney

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. W-1333, SUB 5

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application by Currituck Water and	)	
Sewer, LLC for a Certificate of Public	)	
Convenience and Necessity to Provide	)	<b>PUBLIC STAFF MOTION</b>
Water and Sewer Utility Service in	)	<b>TO SHOW CAUSE</b>
Currituck County, North Carolina and	)	
for Approval of Rates	)	

NOW COMES THE PUBLIC STAFF – North Carolina Utilities Commission (Public Staff), by and through its Executive Director, Christopher J. Ayers, and respectfully moves that the North Carolina Utilities Commission (Commission) issue an order requiring Currituck Water and Sewer, LLC (Currituck), to show cause why the Commission should not issue an order (1) declaring Currituck a public utility; (2) assessing civil penalties against Currituck for violation of applicable statutes and Commission rules; (3) declaring the existence of an emergency warranting appointment of an emergency operator for the water and sewer utility systems serving the Carolina Village subdivision; and (4) appointing an emergency operator for the water and sewer utility systems serving Carolina Village subdivision.

In support of this motion, the Public Staff states the following:

## BACKGROUND

1. On August 16, 2023, Currituck filed an Application for a Certificate of Public Convenience and Necessity and for Approval of Rates (Application) to provide water and sewer utility service to the Carolina Village subdivision in Currituck County, North Carolina, in accordance with N.C. Gen. Stat. § 62-110. The Carolina Village subdivision is also known as the Carolina Village Mobile Home Park; it will be referred to as Carolina Village MHP in the remainder of this filing.

2. The Carolina Village MHP is a community of 149 mobile home sites. The Carolina Village MHP receives water and wastewater service from water and wastewater utility assets located throughout the community. The land on which the mobile home sites and utility assets are located is broken down into multiple parcels. The land on which the mobile home sites are located is currently owned by Carolina Village MHP, LLC, and, upon information and belief, managed by Nelson Communities, which is located in New York. Carolina Village MHP, LLC, purchased the mobile home park from Carolina Village NC, LLC in February 2022.

3. The utility assets and most of the real property on which they are located are either owned or controlled by Currituck.

4. On March 22, 2022, the Consumer Services Division of the Public Staff received a complaint from a customer at Carolina Village MHP. The customer complained about poor water quality and sewer backups and raised questions about the way in which she was being charged for water and sewer service.

According to the customer, she received the attached invoice for water and sewer service charging for services provided in March 2022. A direct bill from a different entity for individually itemized water and wastewater service was a departure from past practice whereby residents were not charged for water and wastewater service separately because those services were included in monthly lot rent paid to the mobile home park owner. As discussed below, the customer's description of the change in billing practices is corroborated by the documents she gave the Public Staff to support her claim. The customer complaint was forwarded to the Public Staff Water and Legal Divisions for investigation. Documentation provided by the customer showed that residents of Carolina Village MHP began receiving utility bills for water and wastewater service from CV-WWT, LLC (CV-WWT), in March 2022. Communications from Nelson Communities (the manager of the mobile home park) included the following statement: "CV-WWT LLC, a division of Envirolink, took over operations, maintenance, and management of the Carolina Village MHC, LLC's water and sewer system serving the community in February 2022." The utility bill included references to, and information about, Envirolink, Inc. (Envirolink). Envirolink's name and logo were clearly printed on the top of the invoice and the mailing address for the utility is the same as Envirolink's address.

5. The documents and account of events provided by the customer indicated that CV-WWT and Envirolink were acting as a de facto utility in violation of Chapter 62 of the North Carolina General Statutes and Commission rules, because they did not have Commission granted authority to charge for water and sewer service. Based on information provided by the customer, the Public Staff

sent the attached cease and desist letter to CV-WWT and Envirolink. CV-WWT responded to the Public Staff's letter on April 29, 2022 (April 2022 Response), through Michael Myers, the President of Envirolink and Vice President, Secretary, and Treasurer of Currituck. According to the April 2022 Response, "the water and sewer system has been and continues to be owned by CV-WWT. Recently, the mobile home park was sold to a new owner with a goal to transfer the water and sewer system to a buyer that is a Public Utility." On May 24, 2022, the Public Staff responded to the April 2022 Response and asked additional questions based on the information included therein. CV-WWT responded on June 10, 2022 (June 2022 Response). In the June 2022 Response, CV-WWT stated that "[m]oving forward, Nelson Communities will pay for water/sewer directly until CV-WWT can transfer the water and sewer utility to a public utility." In making this statement, CV-WWT acknowledged that the park owner had been, and would continue, paying for water and sewer service for the park. Both responses were signed by Elizabeth "Libby" Jenkins.<sup>1</sup> The documents received from the customer and correspondence between the Public Staff, CV-WWT, and Envirolink are attached as Exhibit A.

6. In June 2023, Currituck contacted the Public Staff seeking its support for a petition asking that Currituck's ownership and operation of the water and wastewater systems serving Carolina Village MHP be exempt from Commission

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<sup>1</sup> The identity of the individual authoring the response is significant because the same individual, Elizabeth Jenkins, executed the 2022 APA and both bills of sale in February 2022. The 2022 APA and bills of sale predated the April 2022 Response by at least 60 days. Additional information about the 2022 APA and bills of sale is provided in Paragraph 14 below.

regulation.<sup>2</sup> On June 2, 2023, the Public Staff sent Currituck a list of questions related to Currituck's position that it should be exempt from Commission regulation. The Public Staff's questions and Currituck's responses to those questions are attached as Exhibit B.

7. On June 7, 2023, Currituck sent the Public Staff a draft of the exemption petition it intended to file for review. On June 15, 2023, the Public Staff emailed Currituck a copy of Exhibit A and asked Currituck to reconcile differences between (a) the information Envirolink and CV-WWT provided in response to the cease-and-desist letter from the Public Staff and (b) information in the draft exemption petition Currituck sent the Public Staff. The draft of the exemption petition Currituck provided is attached as Exhibit C. The Public Staff did not receive a written response to its inquiry. The primary concern related to conflicting assertions about the owner of the water and wastewater system at the time of the complaint. The response to the complaint stated that CV-WWT owned the utility in April 2022, but, according to the draft petition, purchase agreement, and bills of sale received from the North Carolina Department of Environmental Quality (NC DEQ) discussed below, Currituck acquired the water and wastewater system in February 2022.

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<sup>2</sup> Michael Myers represented Currituck in all meetings with the Public Staff regarding Currituck. The position that he took that a certificate of public convenience and necessity was not required for operation of the Carolina Village water and wastewater system is not consistent with his submission of an application for a certificate of public convenience and necessity for the systems on behalf of Old North State Water Company, LLC in Docket No. W-1300, Sub 29 on January 19, 2017.

8. The Public Staff and Currituck met to discuss Currituck's exemption petition on July 13, 2023. The discrepancy regarding when Currituck acquired the water and wastewater system was discussed during that meeting. Michael Myers participated in the call on behalf of Currituck. He was unable to explain why information he provided the Public Staff during its review of a customer complaint was materially inconsistent with the draft petition or the fully executed Amended and Restated Asset Purchase and Utility Construction and Maintenance Agreement, dated February 7, 2022 (2022 APA), that was provided in support of the draft petition. The 2022 APA was included as Exhibit 4 to Currituck's Application.

9. On August 9, 2023, the Public Staff contacted Currituck with additional questions about the acquisition of the water and wastewater systems serving Carolina Village MHP. Currituck provided answers to those questions on August 14, 2023. Questions 3 and 5 asked about the financial arrangement between Currituck, Envirolink, and the owner of the mobile home park. Question 3 asked Currituck to describe the service and billing arrangements between Currituck, Envirolink, the mobile home park owner, the mobile home park manager, and the park residents. Currituck (also referred to as CWS) responded as follows: "Since May 2023, Envirolink has been operating the facilities without compensation from CWS, MHP, MHP management or residents. Prior to May 2023, Envirolink received compensation from the MHP owner." Question 5 asked Currituck to "confirm that currently neither CWS nor Envirolink is billing the MHP, MHP management or residents." Currituck's responded as follows: "This is correct." The



entire list of the Public Staff's questions and Currituck's responses to those questions are attached as CONFIDENTIAL Exhibit D. As discussed below, Currituck's responses to Questions 3 and 5 are not consistent with documents Currituck provided in response to discovery requests from the Public Staff.

10. On August 15, 2023, 33 days after the meeting in which the Public Staff questioned Currituck about the date on which it took ownership of water and wastewater systems serving Carolina Village MHP, the 2022 APA was amended and the closing date was modified (2023 Amendment). The closing date specified in Paragraph 8.1 of the 2022 APA was March 9, 2022. The 2023 Amendment amended Paragraph 8.1 of the 2022 APA and retroactively extended the closing date to somewhere between April 2023 and September 2023.

11. As noted above, Currituck's Application seeking Commission authorization to operate water and wastewater utility systems was filed in this docket the following day, August 16, 2023.

### **PUBLIC UTILITY STATUS**

12. N.C.G.S. § 62-2(23)a.2. defines a public utility as "a person . . . now or hereafter owning or operating in this State equipment or facilities for . . . [d]iverting, developing, pumping, impounding, distributing or furnishing water to or for the public for compensation, or operating a public sewerage system for compensation."

13. As discussed below, Currituck is a public utility because it is using equipment and facilities it owns and operates to provide water and sewer utility services to the residents of the Carolina Village MHP for compensation.

14. **Ownership.** Currituck, *under signature of Michael Myers*, entered into an Asset Purchase and Utility Construction and Maintenance Agreement with Equity First NC, LLC, and CV-WWT, LLC (2019 APA), to purchase the Carolina Village water and wastewater utility systems (Carolina Village Utility System) on October 21, 2019. The 2019 APA has been amended *in August 2020, on February 7, 2022 (2022 APA), and August 15, 2023 (2023 Amendment), all three under signature of Michael Myers for Currituck*. The four contracts related to the purchase are attached as Exhibit E. The precise date on which Currituck took ownership of the Carolina Village Utility System is not immediately apparent because of (1) the way in which the APA and amendments to the same are written; (2) the dates on the bills of sale for the wastewater utility asset and real property on which the Carolina Village Utility System is located; (3) the dates on which real property records reflecting Currituck's ownership and control of the Carolina Village Utility System; and (4) the retroactive modification of the closing date. Bills of sale (included in Currituck's Non-Discharge Permit Ownership/Name Change application to DEQ dated May 1, 2023) executed by CV-WWT and EFNC transferring ownership of the wastewater utility assets and the real property on which the Carolina Village Utility System is located, respectively, transfer ownership to Currituck on February 17, 2022. The bills of sale are attached as

Exhibit F.<sup>3</sup> Real property records reflecting Currituck's ownership or control over the real property on which the Carolina Village Utility Systems is located were recorded by the Currituck County Register of Deeds on April 26, 2023 (Special Warranty Deed) and May 15, 2023 (Assignment and Assumption of Water and Sewer Utility Easement and Assignment and Assumption of Deed of Well Easement). Based solely upon the dates on which the aforementioned real property records were recorded, Currituck became the sole owner of the Carolina Village Utility System no later than May 15, 2023. The date of that bill of sale suggests that the transaction was consummated (albeit not formally reflected in the real property records of Currituck County) before the closing date set forth in the 2022 APA, which raises questions of why Currituck waited over a year to perfect its interest in the real property related to the Carolina Village Utility System and why the 2023 Amendment retroactively extended the closing date in the 2022 APA. To further complicate the situation and cloud the issue, on March 25, 2024, Currituck sent the Public Staff bills of sale for the water system assets, wastewater system assets, and real property related to the Carolina Village Utility System. According to the bills of sale provided by Currituck, ownership of all assets and the

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<sup>3</sup> The Public Staff obtained the bills of sale from NC DEQ. The Public Staff requested bills of sale from Currituck in discovery, specifically Public Staff Data Request No. 7, but was initially told that bills of sale could not be located. Currituck finally provided three bills of sale via email on March 25, 2024. In that email, Currituck stated that: "the transfer was completed without a BOS, so we executed a post closing BOS (attached)." The bills of sale for the wastewater system and the real property on which the utility assets are located Currituck provided to the Public Staff are not the same as the bills of sale Currituck provided to NC DEQ. The bills of sale provided to NC DEQ were signed on February 17, 2022, but the bills of sale the Public Staff received from Currituck were signed on March 25, 2024 and all three stated that "the Seller and Buyer closed the transaction on April 26, 2023, without Bill of Sale and Seller is executing this Bill of Sale subsequent to the closing." The bills of sale provided by Currituck are attached as Exhibit Q.

real property was transferred on April 16, 2023. There are also questions regarding why conflicting bills of sale for the same property, executed by the same individual (Elizabeth Jenkins), were provided to two different state agencies.

15. **Operation.** Currituck operates the Carolina Village Utility System through a contractual arrangement with Envirolink. The Utility Management Service Agreement between Envirolink, under signature of Michael Myers, and Currituck, under signature of Jeffrey Yuknis, is dated December 20, 2021, and attached as Exhibit G.

16. **Historic compensation.** Currituck is providing water and wastewater utility service to the public for compensation through its relationship with the owner of the mobile home park, Carolina Village MHP, LLC. As discussed above and shown in Exhibit D, Envirolink (acting on Currituck's behalf) received direct compensation from the owner of the mobile home park for services rendered through May 2023.

17. **Current compensation.** Upon information and belief, Currituck is, and has been, receiving indirect compensation from the owner of the mobile home park since May 2023. Based on invoices received in response to Public Staff discovery requests, some, or all, of the costs of operating and maintaining the Carolina Village Utility System are being charged back to the mobile home park owner through Envirolink. The charges passed through to the mobile home park owner include electricity, chemicals, parts and supplies, and testing. Copies of invoices from Envirolink to Carolina Village MHP, LLC, for the months of July 2022

through December 2023 are attached as Exhibit H. These types of costs are integral expenses for utility operations, which are borne by the utility owner and then generally recovered through rates approved by the Commission. The costs of operating and maintaining the Carolina Village Utility System should be borne by the owner of the system (Currituck) and not the owner of the mobile home park whose residents the system serves (Carolina Village MHP, LLC). By paying those operating costs, Carolina Village MHP, LLC, is indirectly compensating Currituck for the water and wastewater services it is providing. The invoices also include a 15% mark-up that is direct compensation for Envirolink. These invoices show the following:

- a. By assessing and receiving the 15% mark-up, Envirolink is being compensated by the mobile home park owner despite Currituck's representations to the contrary.
- b. Currituck is being compensated by not paying its own operating costs.
- c. The way Envirolink invoiced Carolina Village MHP, LLC, did not change after May 2023, the month after which Currituck alleges Envirolink no longer billed or received compensation from the mobile home park owner. See Paragraph No. 9 above.

### **WASTEWATER SYSTEM PERMIT VIOLATIONS**

18. By letter dated March 1, 2024, the North Carolina Department of

Environmental Quality, Division of Water Resources (DWR) issued a Notice of Violation & Intent to Assess Civil Penalty (NOV) for the Carolina Village Collection System operating under Permit Number WQCSD0176. A copy of the NOV for the Carolina Village Collection System is attached as Exhibit I. The NOV documents substantial noncompliance with applicable regulatory standards.

19. By letter dated March 1, 2024, DWR issued a Notice of Violation & Intent to Assess Civil Penalty (NOV) for the Carolina Village Wastewater Treatment Plant (WWTP) operating under Permit Number WQ0004696. A copy of the NOV for the Carolina Village WWTP is attached as Exhibit J. The NOV documents substantial noncompliance with applicable regulatory standards.

20. There is a history of noncompliance with environmental standards at the Carolina Village Collection System and Carolina Village WWTP (collectively, the Carolina Village Wastewater System). Envirolink began operating both systems on, or about, January 1, 2016, under a Utility Management Service Agreement with CV-WWT dated January 1, 2016 (2016 Management Agreement). The 2016 Management Agreement was superseded by a Utility Service Agreement between Envirolink and EFNC, CV-WWT, and CVNC dated October 21, 2019. Both agreements are attached as Exhibit K.

21. On June 24, 2016, Carolina Village NC, LLC, at that time the owner of Carolina Village WWTP (DEQ Permit No. WQ004696), entered into a Special Order by Consent (SOC), EMC SOC S15-003, with the North Carolina Environmental Management Commission, as a result of the permitted wastewater

treatment system being in disrepair and not capable of meeting effluent limits required by the permit. The SOC identified specific activities to be undertaken and required due dates. The initial SOC expired on November 1, 2017, but was subsequently extended with the last SOC due to expire on July 1, 2019. On February 11, 2020, DEQ sent a letter to Carolina Village NC, LLC, stating that the continuance of the SOC is “not a viable option and that action shall be taken as needed to address any ongoing compliance and/or permitting matters.” The SOC documents described above are attached as Exhibit L. From January 1, 2020, through March 1, 2024, DEQ has issued 46 NOVs to the Carolina Village WWTP resulting in \$64,166 in fines and penalties. These NOVs have typically included monthly average limit exceedances for biochemical oxygen demand (BOD), nitrogen ammonia total, nitrogen nitrate total, nitrogen total, total suspended solids, and phosphorus total, monthly geometric mean exceedance for coliform, fecal membrane filtration (MF), membrane fecal coliform broth, as well as frequency and monitoring violations. These exceedances represent incomplete or ineffective treatment. The WWTP NOVs and Civil Penalties prior to March 1, 2024, described above, are attached as Exhibit M.

22. The Carolina Village Collection System, DEQ permit No. WQCSD0176, has received three NOVs between January 1, 2020, and March 1, 2024. Two NOVs were issued in 2022, and one NOV was issued in 2024. The 2022 NOVs identified inoperable lift station pumps with bypass pumps installed and a site inspection identifying that all lift stations have a “type of temporary pump and float system that is not permitted” for the lift stations. These conditions were

still present on February 21, 2024. The 2022 Collection System NOV's are attached as Exhibit N.

23. DEQ's Drinking Water Watch website shows that between August 2018 and February 2024, DEQ issued 36 NOV's to the Carolina Village Water System. NOV's were typically issued for failing to monitor coliform and chlorine residual and failing to perform public notice. The Carolina Village Water System also received NOV's for failing to monitor disinfection by products, asbestos, nitrate, lead and copper, and dalapon, as well as failing to submit a consumer confidence report. A summary table of the NOV's described above from DEQ's Drinking Water Watch is provided as Exhibit O.

#### **SITE VISIT**

24. Charles Junis, the Director of the Public Staff Water, Sewer, and Telephone Division, and D. Michael Franklin, Public Utilities Engineer III with the Public Staff Water, Sewer, and Telephone Division, observed the condition of the Carolina Village Utility System during a site visit on February 21, 2024 (Public Staff Inspection Team). The site visit was performed in conjunction with a compliance inspection performed by NC DEQ's Washington Regional Office, Water Resources Water Quality Regional Operations personnel (DEQ Inspection Team, and together with the Public Staff Inspection Team, the Inspection Team). After the Inspection Team arrived at the Carolina Village WWTP, David May (the DEQ Inspection Team lead inspector) contacted Michael Myers, Andrew White (EnviroLink NC Operations Manager Triangle/OBX Operations), and Michelle Pharr



(the Backup Operator in Responsible Charge from Albemarle Environmental) to provide notice of the unannounced inspection. After notification, the Backup ORC and their support personnel met the Inspection Team at the Carolina Village WWTP to provide access, operate equipment, and answer questions. During the site inspection, David May maintained continuous telephone contact with Andrew White, Don Feller (Envirolink Quality Manager), and David Pharr (the ORC) and described the Inspection Team's observations and the condition of the Carolina Village WWTP and later, the Carolina Village Water System. The ORC, by phone, provided additional information and addressed questions about areas with which the backup ORC was not familiar.

#### **CURRENT STATUS OF THE WASTEWATER SYSTEM**

25. The site inspection revealed (1) that the Carolina Village WWTP is not properly maintained, and (2) the facility is in a significantly neglected condition. Currently there is no functional means of wastewater disposal at the facility. An unpermitted active discharge had been placed into use, pumping improperly treated wastewater out of a pipe exiting through the fence at the back of the WWTP, with wastewater ponding behind the WWTP and flowing into and polluting surface waters. See attached Exhibit P, Photos 1 and 2.

26. Neither blower was in operation. One blower motor was not properly mounted, missing a belt, not functional, and appeared to have been out of service for an extended period. See Exhibit P, Photo 3. The ORC was asked about the condition of the blowers and stated that the functional blower was on a timer where

it would operate for 40 minutes and then would be shut off for 20 minutes. However, during the several hours that the Inspection Team was on site waiting for the backup ORC to arrive, the blower never operated. The backup ORC was requested to start the functional blower, which a staff member performed by bypassing the timer and activating a contact in the control panel with a screwdriver. See attached Exhibit P, Photo 4. On starting, the blower made a continuous, loud shrieking noise. The basins did begin to churn after the addition of air from the blower, which resulted in a terrible odor and solids being stirred up from the bottom of the basins. See Exhibit P, Photos 5 and 6. The ORC stated the blower was not being used since there was not a spare and there was concern it would fail.<sup>4</sup>

27. Additionally, sludge and solids accumulation were noted in all WWTP tanks with the clarifier full of solids. Chlorine tablets were not present for disinfection. The tertiary filters did not appear to have been operated in the recent past based on dryness and crusting. See attached Exhibit P, Photo 7. When the filters were manually placed in operation, a piping failure occurred. Black water flowed from the tertiary filter piping for an extended period while the filters were in operation and the water did not become significantly clearer during operation. See attached Exhibit P, Photo 8. Furthermore, the standby generator was not operable resulting in no electric power being available to the WWTP in case of a power outage. See attached Exhibit P, Photo 9.

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<sup>4</sup> The logic of that decision is questionable since not having a blower in operation is equivalent to having no functional blower, and no aeration of the basins hinders the treatment process.

28. A wrack line, an area where organic material such as grass and leaves and other debris is deposited by the flow of water, was observed within and around the basin structure receiving and holding effluent from the WWTP. See attached Exhibit P, Photo 10. The elevation of the wrack line coincided with a low point on the dike wall along the southeastern corner of the structure. Observations suggest that the basin structure has overflowed in the past. See attached Exhibit P, Photo 11.

29. After inspecting the WWTP, the Inspection Team inspected the sewer lift stations. Lift station controls and pumps have been an issue for over a year and continue to be in a state of disrepair. The replacement control panels appeared to have been left outside the water tank for months. See attached Exhibit P, Photo 12. Normally lift station lids are kept closed to reduce inflow and infiltration, noise, debris entry, and vandalism. Each of the four lift stations had their lids opened with makeshift equipment installed to keep the lift stations functional. See attached Exhibit P, Photos 13, 14, 15, and 16. Mr. Junis attempted to contact the emergency contacts listed on the signs affixed to fencing and found one number going unanswered and the second answered by an individual stating he was no longer a point of contact for the system.

### **CURRENT STATUS OF THE WATER SYSTEM**

30. At the Carolina Village Water System, orthophosphate, a chemical used for lead and copper corrosion control and as a sequestration agent in water systems, was not being fed because a chemical pump outlet was burnt out. The

chemical feed pump on top of the orthophosphate vat had the intake line moved to the sodium hypochlorite vat to feed chlorine for disinfection. The orthophosphate vat level was also low, and debris was observed inside. See attached Exhibit P, Photos 17 and 18.

31. Based on the equipment and discussion with the ORC, the Carolina Village Water System should have two functional pumps with each pump operated by a separate motor that is electrically wired to an enclosed electrical panel such that electrical wiring and connections are protected from the environment. However, contrary to the above, a singular pump motor was wired from an exposed electrical panel. The ORC stated that a relay contact replacement maintenance activity was being performed. However, based on the wiring lying on the floor, it was obvious that one of the pump motors was not operational. See attached Exhibit P, Photo 19. The relay contacts were being modified to alternate the well pumping.

32. The ground storage tank has peeling paint and considerable exterior corrosion. See attached Exhibit P, Photo 20. The ORC operates the system to keep the tank full. Based on the condition of the water system equipment, it is reasonable to be concerned about the state of the interior of the tank and whether it is contributing negatively to the quality of the water.

### **CIVIL PENALTY ASSESSMENT**

33. Currituck has been engaging in activities reserved for a certificated public utility in violation of Chapter 62 of the North Carolina General Statutes.

34. N.C.G.S. § 62-110(a) states, in pertinent part, that, “no public utility shall hereafter begin the construction or operation of any public utility plant or system or acquire ownership or control thereof, either directly or indirectly, without first obtaining from the Commission a certificate that public convenience and necessity requires, or will require, such construction, acquisition, or operation...”

35. Each day that Currituck engages in activities reserved for certificated public utilities can result in assessment of a daily civil penalty of \$1,000 for each offense. See N.C.G.S. § 62-310.

36. Currituck has violated N.C.G.S. § 62-110(a) at least 634 times by operating a public utility without Commission approval, based on the time, 317 days, between the filing of the easements (May 15, 2023) and the date of this filing and serving both water and sewer. The bills of sale for the “entire sanitary sewer treatment, storage, disposal and collection system located at Carolina Village Subdivision” and “Tract 2A, Tract 2B and East Tract” dated February 17, 2022 included in Currituck’s Non-Discharge Permit Ownership/Name Change application to DEQ provide evidence that the number of offenses could be even greater.

37. Currituck has also violated Commission Rule R10-7 by failing to “comply with the rules of the North Carolina Department of Environmental Quality and the rules of other state and local governmental agencies in the design, construction, operation, and maintenance of its sewer facilities and in the collection, treatment and discharge of the sewage being treated.”

38. Given the foregoing, the Commission has the authority to impose civil penalties, and the circumstances warrant exercising its authority. Currituck could be assessed a civil penalty of \$951,000 for acting as a public utility without Commission approval and not complying with sewer related environmental regulations since at least May 15, 2023. In the alternative, Currituck should be allowed to post a bond in the amount of \$500,000 subject to forfeiture.

### **EMERGENCY**

39. N.C.G.S. § 62-116(b) gives the Commission the authority to “grant emergency operating authority to any person to furnish water or sewer utility service to meet an emergency to the extent necessary to relieve the emergency.” An emergency is defined as “the imminent danger of losing adequate water or sewer service or the actual loss thereof.”

40. As evidenced by the compliance issues identified by DWR and observed by the Public Staff Inspection Team, the Carolina Village Wastewater System is not providing adequate service and, as such, the Carolina Village MHP has suffered an actual loss of adequate sewer service.

41. As evidenced by the description above, the operating conditions of the Carolina Village Water System are precarious and the Carolina Village MHP is at risk of losing adequate water service if either of the following things occur: (1) the one wired pump motor fails; or (2) corrosion of the water tank results in a major leak. In addition, the water quality is unknown to some degree due to monitoring violations that have not been resolved and returned to compliance.

42. Appointment of an emergency operator is an essential first step to re-establishing adequate sewer service and reducing the imminent risk of losing adequate water service for the residents of the Carolina Village MHP.

NOW, THEREFORE, the Public Staff respectfully requests that the Commission schedule a hearing at the earliest possible time and require Currituck to appear at this hearing and show cause why the Commission should not grant the relief the Public Staff requests in this Motion.

Respectfully submitted this the 26th day of March, 2024.

PUBLIC STAFF  
Christopher J. Ayers  
Executive Director

Lucy E. Edmondson  
Chief Counsel

Electronically submitted  
/s/ Reita D. Coxton  
Staff Attorney

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DOCKET NO. W-1333, SUB 5

VERIFICATION

STATE OF NORTH CAROLINA )  
 )  
COUNTY OF WAKE )

I, D. MICHAEL FRANKLIN, being duly sworn, depose and say:

I am a Public Utilities Engineer with the Water, Sewer, and Telephone Division of the Public Staff – North Carolina Utilities Commission (Public Staff). I have read the foregoing Public Staff Motion and the facts stated therein are true of my personal knowledge, except as to any matters stated on information and belief. As to those matters, I believe them to be true.

  
\_\_\_\_\_  
D. Michael Franklin

Sworn to and subscribed before me

This 26 day of March, 2024.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: June 4, 2028

