

Gibson, Lisa M.

From: Coxton, Reita D <Reita.Coxton@psncuc.nc.gov>
Sent: Thursday, June 6, 2024 2:26 PM
To: Haller, Meaghan Klem
Cc: Holt, Gina; Matt Klein; edfinley98@aol.com
Subject: RE: [External] CWS - Eagle Creek Agreement with Envirolink

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Meaghan,

Currituck's analysis is off the mark. As I discuss below, the ONSWC order you cite in your analysis supports our position.

On page 14, the Commission stated that: *"The lawfulness of the Company's conduct in contracting with Integra, the Integra Subsidiaries, CNH, and CNH-ONSWC turns in part on whether those entities are affiliates of ONSWC. Under N.C.G.S. § 62-153(a), public utilities are required to file copies of contracts with any affiliated companies. The Commission has the power to disapprove such contracts, if it finds them to be unjust or unreasonable or made for the purpose or with the effect of concealing, transferring, or dissipating the earnings of the public utility. If the Commission disapproves the contract, it is void. Further, under N.C.G.S. § 62-153(b), no public utility may pay fees or compensation of any description to an affiliate without first filing copies of all proposed agreements with the Commission and obtaining its approval."*

Then, on page 15, the Commission stated that: *"ONSWC must file all contracts between itself and any of its affiliates for review by the Commission. Any agreements not already reduced to writing must be appropriately documented and filed with the Commission. The filing or filings should include details of any compensation that ONSWC has already paid and is obligated to pay under any such contracts."*

And, finally, in Ordering Paragraph 2 on page 30, the Commission ordered ONSWC to *"comply with North Carolina law with respect to any and all transactions with its affiliates and must seek and obtain prior approval from the Commission or give appropriate notice of such transactions as may be required by N.C.G.S. §§ 62-153, -160, or -167."*

If Currituck is steadfast in its insistence that preapproval is not required, then we will be forced to take the matter before the Commission for resolution. We are extremely disappointed that Currituck is not only taking the position that is contrary to the law and long-standing Commission practice, but also reneging on something it agreed to do in the Settlement Agreement and Stipulation

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From: Haller, Meaghan Klem <meaghan.haller@dentons.com>
Sent: Wednesday, May 29, 2024 2:57 PM
To: Coxton, Reita D <Reita.Coxton@psncuc.nc.gov>
Cc: Holt, Gina <gina.holt@psncuc.nc.gov>; Matt Klein <klein@nuinfrastructure.com>; edfinley98@aol.com
Subject: [External] CWS - Eagle Creek Agreement with Envirolink

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Reita,

I write in response to your email of May 10, 2024, setting forth the Public Staff's position that Currituck Water & Sewer, LLC (Currituck) is required to obtain further approval, above and beyond that granted by the Commission's Order on September 13, 2022, concerning the Eagle Creek CPCN, of its Utility Management Services Agreement (Agreement) with Envirolink before it is permitted to pay Envirolink pursuant to that Agreement. In sum, we disagree that anything further is required of Currituck at this juncture. Rather, the relevant authorities demonstrate that it has been, and continues to be, permissible for Currituck to pay Envirolink pursuant to its Agreement for such services following approval of the CPCN.

Though N.C.G.S. § 62-153(b) states that affiliate agreements must be filed with the Commission and approved, relevant authorities interpreting this provision have explained that such agreements (and the costs imposed pursuant to them) are presumed reasonable unless the presumption is overcome. See, e.g., *State ex rel. Utils. Com. v. Conservation Council of N.C.*, 312 N.C. 59, 64, 320 S.E.2d 679, 683 (N.C. 1984) ("Costs are presumed to be reasonable unless challenged.") Specifically, Currituck's obligation to affirmatively present additional evidence to rebut an allegation that costs imposed by its affiliate agreement are unreasonable or unjust "...arises only when the Commission requires it or affirmative evidence is offered by a party to the proceeding that challenges the reasonableness of expenses allocated to it by an affiliated company..." *State ex rel. Utils. Com. v. Intervenor Residents of Bent Creek/Mt. Carmel Subdivisions*, 305 N.C. 62, 76-77, 286 S.E.2d 770, 779 (N.C. 1982). Stated another way, "[a]lthough it always has the authority to do so, in the absence of contradiction or challenge by affirmative evidence offered by any party to the proceeding, the Commission has no affirmative duty to make further inquiry or investigation into the reasonableness of charges or fees paid to affiliated companies. While affiliation calls for close scrutiny, affiliation alone does not impose an additional burden of proof or require the presentation of additional evidence of reasonableness." *Id.* at 778.

This conclusion has been echoed, at least in part, by decisions from the Commission in other proceedings explaining that N.C.G.S. § 62-153(b) provides the Commission with "the power to *disapprove* such contracts, if it finds them to be unjust or unreasonable..." See, e.g., *In the Matter of Application of Old N. State Water Co., Inc., for Auth. to Adjust & Increase Rates for Water Util. Serv. in All Its Serv. Areas in N. Carolina*, No. SUB 60, 2024 WL 1532588, at *11 (Apr. 3, 2024) (Emphasis added); see also *In the Matter of Protest Related to Informational Filing by Duke Energy Carolinas, LLC, & Duke Energy Progress, LLC*, No. E-2, 2021 WL 523050, at *4 (Feb. 5, 2021) (explaining that N.C.G.S. § 62-153 does not require "preapproval" of affiliate agreements).

In light of these authorities, it is clear that there is no additional obligation for the Commission to explicitly approve Currituck's affiliate agreement with Envirolink before costs may be paid pursuant to that agreement. Rather, unless the agreement was challenged as unreasonable (and here, it was not), the Commission's September 13, 2022, Order approving the CPCN is sufficient to satisfy the "approval" required by § 62-153(b), as well as that in the Settlement Agreement and Stipulation, even without findings specifically approving of the Agreement.

We trust this resolves the concern raised in your email, particularly given that there has been no evidence or even argument submitted suggesting that the costs paid to Envirolink pursuant to the Agreement are unreasonable or unjust. If the Public Staff continues to maintain its position that further approval is needed despite these authorities and analysis, however, please provide us with authorities that you believe require further approval or which otherwise demonstrate that it is improper to pay Envirolink pursuant to the Agreement so that we may review and consider them in determining how to proceed.

Thank you,

Meaghan Klem Haller

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