

On August 8, 2019, in Docket No. W-1034, Sub 8, the Public Staff filed a further letter that it sent to WRI on July 24, 2019, informing WRI that, among other things, the requirement of Ordering Paragraph No. 9 to file a report showing that the recommendations referenced in Ordering Paragraph No. 6 (including replacement of the water meters for Rocky River) had been completed was past due.

On August 30, 2019, in Docket No. W-1034, Sub 8, WRI filed a letter (Status Report) providing the following status of work to replace water meters in Rocky River: "No action taken. Funds are not available for this large expense."

On June 25, 2021, Lenny DeVitto filed a complaint against WRI in Docket No. W-1034, Sub 10 alleging that the Company (1) failed to comply with the 2018 Rate Case Order in that it has not replaced the aging water meters, and (2) failed to comply with a requirement by the North Carolina Department of Environmental Quality (DEQ) to repair one of the two wells serving Rocky River or to connect to the Town of Harrisburg water system.

The complaint was served on WRI on July 9, 2021, and an extension of time to file an answer was granted on July 16, 2021.

On August 19, 2021, in Docket No. W-1034, Sub 10, WRI filed its Motion to Make Pleadings More Specific, Motion to Dismiss, and Answer. In its answer WRI cites to its August 30, 2019 Status Report and August 19, 2021 motion in the rate case docket. Further, WRI admits that it had received multiple Notices of Violation from DEQ in 2018 and 2019 and entered into a Consent Judgment in July 2021. The answer was served on Complainant by Order dated August 24, 2021.

On August 25, 2021, Complainant filed his reply requesting a hearing on his complaint.

By its August 19, 2021 motion in Docket No. W-1034, Sub 8, WRI now seeks clarification of the status of the Company's obligation to replace water meters in Rocky River following the filing of its Status Report.

DISCUSSION AND CONCLUSIONS

Ordering Paragraph No. 6 of the 2018 Rate Case Order requires that WRI complete the recommendations identified in Findings of Fact Nos. 8, 9, and 12, within six months of the date of that order. Per WRI's motion, Finding of Fact No. 9 is the relevant portion of the order for which WRI seeks clarification, and it provides as follows: "Water meters at Rocky River are over 25 years old, and the Public Staff has recommended that they be replaced." 2018 Rate Case Order at 4. Accordingly, and simply put, per the 2018 Rate Case Order, the Commission ordered WRI to replace the water meters in Rocky River. The deadline for completion of the water meter replacement project was six months from the date of that order, or May 21, 2019. The deadline for replacing these meters has long passed, and despite the Public Staff's notifications of pending deadlines and

noncompliance following missed deadlines, WRI has not replaced the meters nor demonstrated its intent to replace the meters in Rocky River now or in the future.

WRI has made no request, and the Commission has taken no action, to extend the deadline set for replacing these meters, nor has the Commission issued any amendment to the 2018 Rate Case Order altering the requirement that WRI replace the meters in Rocky River. Additionally, neither receipt of formal complaints from individual customers from Rocky River nor the assessment of penalties for failure to respond to other Commission directives appears to have incited WRI to begin replacement of the Rocky River water meters. Nor has WRI filed a proposed plan with the Commission outlining the steps it intends to take to meet the requirements of the 2018 Rate Case Order.

The system improvements and other recommendations ordered in the 2018 Rate Case Order came before the Commission as a joint request from the Public Staff and WRI, with both declaring agreement to the terms and conditions proposed for the order. Dennis Abbott, the long-term President of WRI, stated under oath at the hearing that he and the Public Staff had reached an agreement, stating, “[w]e [WRI] did review the Public Staff’s written testimony.” While WRI did not provide its own written testimony, he further stated:

[W]e do accept the Public Staff’s recommendations with the understanding that with these rates and with some of the recommendations the Public Staff is making, it will create a larger Delta than we currently have between revenue and expenses and create a large shortfall for us, so we’re going to have to come back shortly for another rate increase.

Tr. 11. Based on these statements, the Hearing Examiner found as Finding of Fact No. 31 that “WRI agrees with the Public Staff’s rates and recommendations.” Thus, it does not appear that there was any confusion or misunderstanding of the requirements that WRI was expected to meet.

The Commission has a long history with WRI, beginning with the approval of WRI’s acquisition of the water utility franchise serving Rocky River and approval of rates in Docket No. W-1034, Sub 0 in 1993. However, following the issuance of the Commission’s Recommended Order Granting Partial Rate Increase, Requiring Improvements, and Requiring Customer Notice, issued on December 3, 2002, in Docket No. W-1034, Sub 4 (2002 Rate Case Order), WRI began missing compliance deadlines and disregarding Commission mandates. On May 6, 2003, the Public Staff notified WRI of five areas of noncompliance with the 2002 Rate Case Order. WRI complied with four of these requirements after the Commission’s deadline. Despite several letters, however, the latest of which was April 6, 2004, requesting signed copies of the contracts with Abbott Enterprises, Inc., there is no indication in the docket that an executed copy of the contract was ever provided by WRI.

On November 19, 2015, in Docket No. M-100, Sub 138, the Commission issued its Order Requiring Revised Tariff Filings and Requesting Review by the Public Staff. In

the order the Commission concluded, among other things, that water and wastewater public utilities must adjust their rates, effective for the taxable year beginning on or after January 1, 2016, to reflect the reduction from 5% to 4% in the State corporate income tax rate. As part of the order, the Commission required that all water and wastewater public utilities file revised tariffs by no later than December 21, 2015, reflecting the new rates at the 4% State corporate income tax rate. WRI did not file a revised tariff as required in the November 19, 2015 order. Instead, on January 21, 2016, the Public Staff filed its comments regarding water and wastewater companies and noted in its comments that WRI had its rates established in a general rate case and calculated the revenue requirement impact of the reduction for WRI. The Public Staff also noted that it prepared a revised tariff for WRI requiring the Commission to approve WRI's revised rates without participation of the Company. While WRI disregarded the Commission's November 19, 2015 order, it did provide the required customer notice and filed a verification that it had adjusted its rates accordingly.

Most recently, in Docket No. W-1034, Sub 9, WRI failed to respond to a formal customer complaint regarding issues with a water meter. WRI was served with an Order Serving Complaint and was required to file a responsive pleading no later than February 12, 2021. As of April 29, 2021, WRI had not filed an answer to the complaint, requiring the Commission to issue an Order Scheduling Show Cause Hearing. The show cause hearing was held on June 3, 2021, and Dennis Abbott, WRI's President, provided testimony wherein he acknowledged that WRI has fallen short of meeting the Commission's reasonable expectations for how a water utility should be run. Based on the show cause hearing, the Commission found that WRI's failure to comply with the Commission's February 2, 2021 Order Serving Complaint and to file the required answer to the complaint indicated a lack of respect or at least indifference to the Commission and its authority. Consequently, on August 13, 2021, the Commission ordered WRI to pay \$2,500 to the Office of the Chief Clerk for failure to comply with the Commission's order.

It is not the role of the Commission or the Public Staff to remind utility companies of their obligations under Commission orders. When the Commission orders a utility to take action or make a filing, the utility is expected to comply with the Commission's order without being told twice. However, in response to the 2018 Rate Case Order the Public Staff provided reminders to WRI on two separate occasions of WRI's obligation to replace the water meters in Rocky River. WRI has not sought relief from this requirement and has not complied with the meter replacement requirement. WRI has continued to disregard the authority of the Commission and the potential wellbeing of its customers in Rocky River, and further disregard will not be tolerated.

In addition to WRI's failure to comply with the requirement of Ordering Paragraph No. 6 to replace the water meters in Rocky River, it appears from the Status Report that

at the time it was filed WRI had not fully complied with the following additional requirements of the 2018 Rate Case Order:

- Per Ordering Paragraph No. 5: That WRI correct the deficiencies stated in Findings of Fact Nos. 7 and 11 within 90 days (February 19, 2019) of the date of that order;
 - Finding of Fact No. 7(b) (Rocky River): A faucet or spigot for sampling treated water prior to delivery to the first customer was not provided, which violates the requirements of 15A NCAC 18C.0402(e);
 - WRI Response: Awaiting inspection from DENR to make sure sampling point is sufficient;
 - Finding of Fact No. 11(b) (River Walk): A properly sized vacuum relief valve is not provided for the hydropneumatic tank, which violates the requirements of 15A NCAC 18C.0405(c)(3);
 - WRI Response: Contractor was hired to do work but replaced the wrong valve. A new work order has been Issued. To be completed by October 21, 2019;
- Per Ordering Paragraph No. 6: That WRI complete the recommendations identified in Findings of Fact Nos. 8 and 12 within six months (May 22, 2019) of the date of that order;
 - Finding of Fact No. 8(a) (Rocky River): Due to the results from the iron and manganese field readings occasionally exceeding the secondary maximum contaminant levels, it is recommended that the water filter be evaluated by a qualified professional to assess the operation and maintenance of the water filter;
 - WRI Response: Not completed due to lack of funds. Regular and consistent backwashing by the newly hired operator has proven to prevent issues with iron and manganese field readings.
 - Finding of Fact No. 8(c): That the elevated storage tank be regularly inspected by a qualified professional and that the vent be inspected on a regular basis to ensure that the screen is intact;
 - WRI Response: To be completed by October 31, 2019;
 - Finding of Fact No. 8(d): That the holes observed in the lower portion of the western wall of the building containing the filter be repaired;
 - WRI Response: Work order issued to contractor. To be completed by October 31, 2019;
 - Finding of Fact No. 12(b) (River Walk): That the leaking Well 1 blow-off valve be repaired or replaced;
 - WRI Response: No action taken;

- Finding of Fact No. 12(c): That the hydropneumatic tank and ground storage tank be either replaced or cleaned and recoated by a qualified professional;
 - WRI Response: No action taken due to lack of funds;
- Finding of Fact No. 12(d): That trees and limbs surrounding both well houses and water tanks be trimmed as necessary to ensure that no water system components would be damaged in the event of falling trees and limbs; and
 - WRI Response: To be completed by October 31, 2019, if funds are available.
- Per Ordering Paragraph No. 10: That WRI keep a log of customer complaints. The log shall include the date and time the customer contacted WRI or its answering service, a description of the complaint, what was done to resolve the issue, and the date and time that resolution of the issue was communicated back to the customer. A copy of these records shall be filed in this docket on a quarterly basis until further order of the Commission;
 - WRI Response: Ongoing compliance is in place [No quarterly filing has yet been made.]

As the due date for compliance with each of these requirements has passed and WRI has not provided an updated status report, the Commission finds it necessary to direct the Public Staff to investigate the status of each of these outstanding requirements and any other commitments from the 2018 rate case and report back to the Commission on its findings. Moreover, the Commission is concerned about the impact of the DEQ Notices of Violation and Consent Judgment on the Company's adequacy of service to its customers and whether appointment of an emergency operator should be considered at this time; thus, and the Commission directs the Public Staff to further investigate these matters.

Based on the foregoing, the entire record, and WRI's repeated noncompliance with Commission orders throughout its tenure as a regulated water company, the Commission determines that WRI knew it was required to replace the meters in Rocky River by May 21, 2019, and that no clarification of the ordering paragraphs of the 2018 Rate Case Order is necessary. The time for WRI to seek clarification, if at all, would have been immediately following issuance of the 2018 Rate Case Order. It is clear, however, from the testimony in that case and the subsequent Status Report that the Company knew what it was agreeing to do, understood what it was ordered to do, and willfully failed to comply with its agreement and the Commission's order.

Given the decisions herein to require WRI to comply with the requirement of Ordering Paragraph No. 6 to replace the water meters in Rocky River and to require an

investigation by the Public Staff, the Commission finds good cause to hold in abeyance the complaint of Lenny DeVitto.

IT IS, THEREFORE, ORDERED as follows:

1. That WRI shall replace all meters in Rocky River within four months from the date of this Order;

2. That the Public Staff shall investigate the status of WRI's compliance with the 2018 Rate Case Order, the impact of the DEQ Notices of Violation and Consent Judgment on the Company's ability to adequately serve its customers, and whether appointment of an emergency operator should be considered at this time; and the Public Staff shall file a report on the status of its investigation of these matters within 90 days of the date of this Order; and

3. That the complaint of Lenny DeVitto filed in Docket No. W-1034, Sub 10 shall be held in abeyance pending further order of the Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 21st day of September, 2021.

NORTH CAROLINA UTILITIES COMMISSION



Lindsey A. Worley, Acting Deputy Clerk