

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. W-1034, SUB 8
DOCKET NO. W-1034, SUB 10

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. W-1034, SUB 8)	
)	
In the Matter of)	
Application by Water Resources, Inc.,)	
for Authority to Increase Rates for)	
Water Utility Service in Rocky River)	
Plantation Subdivision in Cabarrus)	
County and River Walk Subdivision in)	
Mecklenburg County, North Carolina)	
)	
DOCKET NO. W-1034, SUB 10)	PUBLIC STAFF
)	INVESTIGATION REPORT AND
In the Matter of)	RECOMMENDATIONS
Lenny DeVitto, 8529 Indian Summer)	
Trail, Harrisburg, North Carolina)	
28075,)	
)	
Complainant)	
)	
v.)	
)	
Water Resources, Inc.,)	
)	
Respondent)	

NOW COMES THE PUBLIC STAFF by and through Christopher J. Ayers, Executive Director, and pursuant to the Commission’s Order Ruling on Motion for Clarification, Holding Complaint in Abeyance, and Requiring Public Staff Investigation issued on September 21, 2021, in Docket Nos. W-1034, Sub 8, and W-1034, Sub 10 (Investigation Order), respectfully submits its Investigation Report and Recommendations.

The Commission's Investigation Order directs the Public Staff to investigate the status of Water Resources, Inc.'s (WRI) compliance with the 2018 Rate Case Order, the impact of the North Carolina Department of Environmental Quality (DEQ) Notices of Violation and Consent Judgment on WRI's ability to adequately serve its customers, and whether appointment of an emergency operator should be considered at this time, and file a report within 90 days of the order.

The Public Staff makes the following findings as a result of its investigation.

In short:

- (1) WRI is largely in compliance with the actions required by the 2018 Rate Case Order, although WRI failed to complete several items within the timeframe specified by the Commission.
- (2) Most of the issues identified in the DEQ Notices of Violation have been addressed and thus have little to no impact on WRI's ability to adequately serve its customers. While WRI has not yet complied with the Consent Judgment by interconnecting with the Town of Harrisburg's (Town) water system or executing an alternate course of action to comply with State drinking water laws, WRI has retained an experienced water engineer who is exploring a possible, lower cost method of compliance.
- (3) Given WRI's overall compliance with the 2018 Rate Case Order and feedback received from DEQ personnel, an appointment of an emergency operator should not be considered at this time.

I. Compliance with the 2018 Rate Case Order (Docket No. W-1034, Sub 8)

Based on documents filed by WRI and the Public Staff in Docket No. W-1034, Sub 8, WRI's responses to the Public Staff's formal and informal data requests, site inspections performed by Public Staff Engineer Mike Franklin and Staff Attorney William Grantmyre on December 10, 2021 (PS Inspection), and information obtained from DEQ, the Public Staff concludes that Ordering Paragraphs 3, 4, 5, and 7 of the 2018 Rate Case Order have been addressed by WRI, although most of the items required therein were not completed in the required timeframe. Ordering Paragraph 5 required the findings of fact (FOF) nos. 7 and 11 to be corrected within 90 days of the date of the 2018 Rate Case Order. Despite this, WRI did not correct FOF 7.a, 7.b, 7.c, 7.e, 11.a and 11.b within 90 days of the Commission Order (February 19, 2021). FOF 11.a was corrected at the end of the first quarter of 2019. FOF 7.a, 7.c and 7.e were corrected in the second quarter of 2019, while FOF 7.b and 11.b were corrected in the third quarter of 2019.

The following ordering paragraph items remain open and are still required to be addressed by WRI:

A. Ordering Paragraph 6, FOF 8.c

FOF 8.c is a recommendation that DEQ set forth in its April 3, 2018, Notice of Deficiency Letter to WRI. Specifically, it proposes that (i) the elevated storage tank serving Rocky River Plantation subdivision should be regularly inspected by a qualified professional and (ii) the vent should be inspected on a regular basis to ensure that the screen is intact. In response to Public

Staff Data Request 5, Item 3.b, WRI provided a February 2020 inspection report of the elevated storage tank but disclaimed that the “work has not been performed to date.” Indeed, the inspection report provides that “[t]he screen is broken on the roof vent. A new hatch and roof vent is recommended.” Accordingly, while the inspection has been completed as recommended, the purpose of the tank inspection, to ensure the vent screen is intact, was not accomplished. In response to Public Staff Data Request 6, Item 4, WRI stated that American Tank Maintenance has been authorized to repair the roof vent and hatch and that those repairs were scheduled for the week of December 13, 2021.

During the PS Inspection, WRI informed the Public Staff that the American Tank Maintenance roof vent and hatch repairs were scheduled for December 14, 2021. All other recommendations identified in FOF 8 have been completed by WRI, although none of them were completed in the timeframe specified in the 2018 Rate Case Order.

B. Ordering Paragraph 6, FOF 9

FOF 9 is a Public Staff recommendation to replace the water meters in Rocky River Plantation subdivision due to their age. Ordering Paragraph 6 required the recommendation to be completed within six months of the date of the 2018 Rate Case Order.¹ In the WRI letter filed with the Commission on August 30, 2019, over nine months after the date of the Order (WRI report), WRI stated no action had been taken on the recommendation due

¹ November 21, 2018.

to “funds not [being] available.” On August 19, 2021, WRI filed a Motion for Clarification with the Commission that requested an order explaining whether the 2018 Rate Case Order still requires WRI to replace water meters in the Rocky River Plantation subdivision. The Investigation Order requires WRI to replace all meters in Rocky River Plantation subdivision within four months from the date of the order.

In response to Public Staff Data Request 6, Item 5, WRI stated that the replacement water meters have been ordered and received, with installation scheduled to begin the week of December 20, 2021, which was later reaffirmed during the PS Inspection.

C. Ordering Paragraph 6, FOF 12.c

FOF 12.c is a recommendation that DEQ provided in its January 2, 2018, Notice of Deficiency Letter to WRI. The recommendation is for the hydro-pneumatic tank and ground storage tank serving River Walk subdivision to be either replaced or cleaned and recoated by a qualified professional. In its report, WRI stated no action had been taken on the recommendation “due to lack of funds.” In response to Public Staff Data Request 6, Item 2, WRI stated that two quotes have been received to perform the work, with a third quote expected by December 10, 2021.

During the PS Inspection, WRI stated that the work to clean and recoat the exteriors of the hydro-pneumatic tank and ground storage tank would be released to the “best bidder” by December 13, 2021. All other

recommendations identified in FOF 12 have been completed by WRI, although not in the timeframe specified in the 2018 Rate Case Order.

With the exception of Ordering Paragraph 6, FOFs 8.c, 9 and 12.c, the Public Staff considers all remaining recommendations identified in Ordering Paragraph 6 as either completed or having been sufficiently addressed through an alternate course of action. However, most recommendations were not completed within the timeframe specified in the 2018 Rate Case Order.

D. Ordering Paragraphs 8 and 9

Ordering Paragraph 8 required WRI to file a report 90 days after the 2018 Rate Case Order became final and effective that confirms that the requirements of Ordering Paragraph 5 have been completed, while Ordering Paragraph 9 required WRI to file a report six months after the 2018 Rate Case Order became final and effective that confirms the requirements of Ordering Paragraph 6 have been completed. The only report WRI filed with the Commission was filed on August 30, 2019, more than eight months after the 2018 Rate Case Order became final and effective and well past the dates specified in Ordering Paragraphs 8 and 9. Additionally, at the time the report was filed, neither all the requirements of Ordering Paragraph 5 nor all the recommendations of Ordering Paragraph 6 were completed. Thus, the Public Staff finds that WRI failed to comply with Ordering Paragraphs 8 and 9.

E. Ordering Paragraphs 10, 11, and 12

Ordering Paragraphs 10, 11, and 12 require WRI to keep a log of customer complaints with each ordering paragraph identifying specific information to be included in the log. Until further order of the Commission, Ordering Paragraph 10 requires a copy of the log book records to be filed in Docket No. W-1034, Sub 8 on a quarterly basis. With regards to these three ordering paragraphs, the WRI Report provides that “Ongoing compliance is in place.” However, the first quarterly log, which was filed on September 20, 2021, was for the second quarter of 2021, with the third quarter of 2021 customer logs filed on November 19, 2021. In response to Public Staff Data Request 4, Item 1.k., WRI stated “Up-to-date filings will be made by 9/17/2021.” In Public Staff Data Request 6, Item 6, the Public Staff requested WRI file with the Commission the required quarterly logs, beginning with the first quarter of 2019 ending March 31, 2019. WRI responded that available customer logs for the period January 2019 through April 2021 were filed with the Commission on December 6, 2021, although the actual filing date was December 7, 2021. The Public Staff reviewed the December 7, 2021 filing and believes that the information provided by WRI was of limited use since the complaint information provides only a brief description and does not identify actions taken to resolve the customer complaints. Additionally, the customer log is incomplete, providing no information from March 10, 2020 through May 10, 2021.

During the PS Inspection, WRI acknowledged the limited information provided in the December 7, 2021 filing, admitting that this was due to its

staff attempting to recreate customer logs from handwritten notes prepared by previous staff. WRI stated that the previous staff had misinformed WRI's president and owner Dennis Abbott that the logs were being maintained and filed with the Commission. Mr. Abbott failed to ensure requirements of the 2018 Rate Case Order were being implemented. Staffing changes were recently made to improve customer service response and comply with Ordering Paragraphs 10, 11, and 12.

II. Impact of DEQ's Notices of Violation and Consent Judgment on WRI's Ability to Adequately Serve Its Customers

A. DEQ Notices of Violation

The 2018 Rate Case Order identified two DEQ Notice of Deficiency letters that were sent to WRI. The first, dated January 2, 2018, concerned the River Walk subdivision and the second, dated April 3, 2018, concerned the Rocky River Plantation subdivision. The violations and recommendations identified in the Notice of Deficiency letters can be grouped into the following categories.

1. Water utility system equipment/structures.
 - a) Not adequately secured.
 - b) Not installed or operating as designed.
 - c) Not inspected or maintained as required.

Items in this category increase the risk that (i) customers are provided contaminated water, (ii) the water utility system is damaged or is not functioning properly, which would result in system operational and performance issues; and (iii) the water system equipment fails, resulting in water utility system outages and potential staff injuries.

2. Water quality testing and/or sampling.

- a) Testing/sampling not performed or not performed with the required frequency.
- b) Test results were not within recommended parameters.
- c) Test equipment not stored and/or maintained as required.
- d) Secondary water quality issues.

Items in this category increase the risk of water being provided to residents that has levels of contaminants and toxins that exceed regulatory limits and/or is undesirable for consumption.

B. Consent Judgment

On July 15, 2021, the Consent Judgment was issued regarding WRI's failure to provide the Rocky River Plantation subdivision with at least two operational wells or, in lieu of a second well, another approved water supply source in accordance with the North Carolina Administrative Code, 15A NCAC 18C.0402(g)(5). The Consent Judgment provides that WRI has been in violation of 15A NCAC 18C.0402(g)(5) since June 30, 2019 and notes that the "consequences of having only one well for a system serving more than 50 connections is significantly elevated public health risk". Specifically,

any disruptions, outages or failures of the sole remaining well elevate public health risk due to inadequate pressure in the distribution system, which provides an opportunity for contaminants to enter the system. Additionally, disruptions in water service further elevate public health risk as hand hygiene, operable toilets, bathing, and food preparation are compromised. Failure to bring a water system into compliance with the North Carolina Drinking Water Regulations would have “an adverse effect on the public interest” and “continued non-compliance exposes residents at the Rocky River Plantation subdivision to significantly elevated public health risks.” Accordingly, the Consent Judgment requires WRI, among other things, to interconnect the Rocky River Plantation water system to the Town’s water system, or execute an alternate means of ensuring the Rocky River Plantation System is in compliance with the North Carolina Drinking Water Act, N.C. Gen. Stat. § 130A-313 *et. seq.*, 15A NCAC 18C.0402(g)(5), and other related regulations.

In response to Public Staff Data Request 6, Items 12 through 14, WRI stated that the estimated date for placing the Rocky River interconnection into active service is the second quarter of 2022. While the easement required for the interconnection to the Town has been verbally agreed to with the property owner, WRI has yet to execute and record an easement.

During the PS Inspection, WRI advised the Public Staff that an alternative to interconnection with the Town was being considered in light of the interconnection costs. WRI has received quotes from the Town for a bulk

water connection using a six inch meter. WRI was quoted a Water System Development Charge of \$185,850, along with a Facility Charge equal to the combined cost of the meter connection, including meter, appurtenances, and labor, and a 10% markup. In addition, the monthly commodity charge for out-of-town commercial service is \$11.89 per 1,000 gallons for any amounts purchased over 15,000 gallons.

Furthermore, WRI notified the Public Staff that it has retained Robert Burgin, PE, an experienced water and wastewater system engineer. WRI will be meeting with Mr. Burgin the week of December 13, 2021 to evaluate whether blending water from the two existing wells would achieve compliance with North Carolina Drinking Water regulations. There is already a raw water line between the two wells that could materially reduce capital costs for compliance.

Although blending water from the two wells may be a viable option, based on the information provided by WRI to date, the Public Staff cannot determine how or when compliance with the North Carolina Drinking Water Act, N.C.G.S. § 130A-313 *et. seq.*, 15A NCAC 18C.0402(g)(5), and other related regulations will be achieved.

C. Customer Complaints

To assess the impact of WRI's service issues to customers, the Public Staff reviewed three sources of information: (i) formal complaints filed with the Commission; (ii) customer complaints logged by Public Staff – Consumer Services Division (Consumer Services) from January 1, 2019 to December

1, 2021; and (iii) WRI customer contact logs filed with Commission for the period covering January 2019 through September 2021. The Public Staff's review of this specific issue focused on water utility system operation complaints and not customer complaints related to billing. It should also be noted that WRI was required by Ordering Paragraph 10 of the 2018 Rate Case Order to file the customer logs quarterly. Contrary to the directives of the 2018 Rate Case Order however, WRI's first customer log filing was submitted on September 20, 2021 and covered May and June 2021.

1. Formal Complaints

Two formal complaints have been filed with the Commission by Rocky River Plantation subdivision residents. The first formal complaint was filed in Docket No. W-1034, Sub 9 on February 1, 2021. The complaint concerns a longstanding water meter leak that damaged the complainant's residence. The leak was first brought to WRI's attention the week of Christmas 2019. On September 29, 2021, a Commission hearing was held with the complainant and WRI presenting testimony. At the time of the filing of this report, the Commission has not issued an order.

The second formal complaint was filed in Docket No, W-1034, Sub 10 on June 25, 2021. That complaint concerns WRI's failure to comply with the 2018 Rate Case Order and Ordering Paragraph 6, FOF 9. FOF 9 is the Public Staff's recommendation that WRI replace the water meters in Rocky River Plantation subdivision due to their age. The complaint also

identified WRI's failure to provide a second water supply source as required by 15A NCAC 18C.0402(g)(5) and cited the Consent Judgment. As a result of the Investigation Order, the second formal complaint is currently being held in abeyance pending a further Commission order.

2. Customer Complaints Received by Consumer Services

From January 2019 through December 1, 2021, Consumer Services received nine customer complaints. Of the complaints received, two resulted in the formal complaints that were filed with the Commission. Four separate complaints were due to water leaks at homes in the Rocky River Plantation subdivision. Of those four complaints, one complaint was withdrawn, no leak was found in the second complainant's property, and WRI repaired the remaining two leaks in the other complainants' residents. The three remaining complaints were submitted by River Walk subdivision residents. Two complaints were for low water pressure and one complaint was a question regarding the acceptability of water use after the water system had been out of service. WRI addressed the low water pressure by repairing a booster pump which is discussed in more detail below. It is unclear how the question on acceptability of water use was resolved. Consumer Services has since closed that complaint due to the lack of response from the complainant.

3. WRI Customer Contact Logs

WRI began filing with the Commission quarterly customer contact logs on September 20, 2021. The September 20, 2021 filing covered the period from May 11, 2021 through June 30, 2021. The November 19, 2021 filing covered the third quarter of 2021. On December 7, 2021, WRI filed customer logs from January 2019 through May 2021. However, the customer logs filed on December 7, 2021 are of limited use because the complaint information provides only a brief description and does not identify actions taken to resolve the customer complaints. Additionally, it does not provide customer complaint information for the period of March 10, 2020 through May 9, 2021.

The WRI customer logs filed with the Commission on September 20, 2021 and November 19, 2021 include 43 complaints from 19 residences. Of those complaints, twelve concerned water leaks at eight residences in Rocky River Plantation subdivision. No leaks were reported from River Walk subdivision residents. Four of the reported leaks were either on the customer side of the water line or not actual leaks, but rather internal plumbing issues. In most cases, water leaks were repaired within 24 hours of being reported, although repairs of four separate water leaks took between three to seventeen days, with a contractor required for the seventeen day leak.

The WRI customer logs also identified 23 complaints from nine residences related to low water pressure. All of the low water pressure complaints occurred at River Walk subdivision except for one in the

Rocky River Plantation subdivision. Additionally, one of the low water pressure complaints was from the River Walk subdivision homeowner's association. Low water pressure issues in the River Walk subdivision began on June 21, 2021, with customer complaints continuing through September 2021. WRI's initial response to these customer complaints was that a recent inspection found no issues were causing the low water pressure. In July 2021, WRI notified customers that a contractor would evaluate the system and conveyed its desire to resolve the issue. WRI continued with this approach until late August 2021 when WRI met with a consultant who recommended the repair/replacement of the booster pumps. In response to Consumer Services' inquiry into the River Walk subdivision water pressure issues, WRI stated that it had received reports of reduced water pressure from a small number of customers (four to five) located at the furthest point from the pump station and that the reduction in pressure during peak usage times was due to a reduction in the efficiency of the two booster pumps in service. WRI ordered replacement parts to repair one of the booster pumps and determined the second booster pump could not be repaired, but would need to be replaced. WRI advised that delivery of a new booster pump would take three to five weeks. WRI also stated that the River Walk subdivision water system is designed so that one booster pump provides maximum pressure. Therefore, repairing one booster pump would correct the water pressure issues.

During the PS Inspection, the Public Staff requested that WRI explain the timeline of the River Walk subdivision low pressure issues. WRI stated that one of the two booster pumps was replaced in March 2020. When WRI was first notified of low water pressure issues, WRI used its own maintenance contractor to investigate. The maintenance contractor performed an inspection and concluded that the River Walk subdivision water utility system was operating properly. When WRI continued to receive low water pressure complaints, WRI hired a different contractor to investigate. The contractor concluded that both booster pumps were not performing as required and recommended repairing the booster pump that was installed in March 2020 and replacing the second booster pump. WRI completed repairs of the first booster pump in late September 2021 and the system pressure was fully restored shortly thereafter. The second booster pump has been replaced and both booster pumps are fully operational.

The WRI customer logs filed with the Commission on September 20, 2021 and November 19, 2021 included eight customer complaints from customers experiencing cloudy or milky water. Six of the complaints were from one residence and the remaining two complaints were from a second residence, with both residences located on the same street within six houses of each other and approximately one tenth of a mile apart. Typically, WRI responded to these complaints on the day the complaint was received by blowing the water lines to eliminate air in the

lines. However, the residence with six customer complaints eventually requested WRI resolve the issue “once and for all”. During the PS Inspection, WRI informed the Public Staff that WRI has installed an automatic system to fill the elevated storage tank. Previously, the system was operated manually and it is believed that air entered the system during the extended well pumping and filling of the elevated storage tank. WRI believes the extended pumping drew down the water level in the well, allowing air to enter the pump and system. Since the automatic system has been installed, WRI has not received any customer complaints related to cloudy or milky water.

The issues identified in the DEQ Notice of Violation letters and the Consent Judgment demonstrate that WRI lacks a sense of urgency to correct deficiencies and comply with North Carolina Drinking Water Regulations. The identified issues increase the risks for disruptions in the water system, provide opportunities for contaminants to enter the water utility system, increase risks to staff safety, and, due to inadequate or deficient water system sampling and testing, increase the risk of contaminants exceeding prescribed levels in the water provided to WRI customers. While WRI has corrected the deficiencies identified in the DEQ Notice of Violation letters, not all were corrected in the timeframe specified by the Commission. Additionally, three recommendations identified in the DEQ Notice of Violation letters remain to be implemented, specifically the repair of the vent screen on the elevated storage tank, the replacement of meters in Rocky

River Plantation subdivision, and the replacement or cleaning and recoating of the hydro-pneumatic and ground storage tanks. Moreover, WRI has yet to interconnect with the Town or execute an alternate course of action to ensure compliance with State drinking water laws, as required by the Consent Judgment.

III. Consideration of Appointment of Emergency Operator

N.C.G.S. § 62-118 (b) provides the following:

If any person or corporation furnishing water or sewer utility service under this Chapter shall abandon such service without the prior consent of the Commission, and the Commission subsequently finds that such abandonment of service causes an emergency to exist, the Commission may, unless the owner or operator of the affected system consents, apply in accordance with G.S. 1A-1, Rule 65, to a superior court judge who has jurisdiction pursuant to G.S. 7A-47.1 or 7A-48 in the district or set of districts as defined in G.S. 7A-41.1 in which the person or corporation so operates, for an order restricting the lands, facilities and rights-of-way used in furnishing said water or sewer utility service to continued use in furnishing said service during the period of the emergency. An emergency is defined herein as the imminent danger of losing adequate water or sewer utility service or the actual loss thereof. . . . That court may, in its discretion, appoint an emergency operator to assure the continued operation of such water or sewer utility service.

At this time, the Public Staff is not of the opinion that an emergency operator should be appointed. Neither River Walk nor Rocky River Plantation subdivisions are in imminent danger of losing adequate water utility service. The Public Staff sought input from DEQ's Regional Engineer in the Mooresville Regional Office and after discussion with the Section Chief, he agreed that DEQ does not consider River Walk or Rocky River Plantation subdivisions as

being in imminent danger of losing adequate water utility service. Further, WRI is investing substantial funds in the water utility systems at both River Walk and Rocky River Plantation subdivisions. Although it has taken longer than required, most of the deficiencies identified in the 2018 Rate Case Order have been addressed and WRI is addressing the remaining recommendations identified in the ordering paragraphs from that order. WRI has made internal staffing changes and replaced the operator responsible to improve customer service. While the Consent Judgment remains unresolved at this time, WRI is moving towards a resolution.

IV. Public Staff Recommendation

Based on the information the Public Staff has received to date, WRI has not addressed the following required items:

- A. The replacement of the vent screen and hatch on the elevated storage tank located in Rocky River Plantation subdivision.
- B. The replacement of the water meters in the Rocky River Plantation subdivision.
- C. The cleaning and recoating of the hydro-pneumatic tank and ground storage tank located in River Walk subdivision.
- D. Providing the Rocky River Plantation subdivision with at least two operational wells or, in lieu of a second well, executing an alternate means of ensuring the Rocky River Plantation System is in compliance with the North Carolina Drinking Water Act and related regulations, as required by the Consent Judgment.

The Public Staff recommends that the Commission issue an order requiring WRI to report the status of these four items every 30 days, with the first report due January 31, 2022. Each report should include the status of each item, including the date by which the item will be resolved in accordance with the 2018 Rate Case Order or the Consent Judgment, as applicable. If the item has been resolved as required, WRI should certify the completion of the item in accordance with the requirements of the 2018 Rate Case Order or the Consent Judgment, as applicable.

This concludes the Public Staff's investigation report.

Respectfully submitted this the 20th day of December, 2021.

PUBLIC STAFF
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Electronically submitted
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CERTIFICATE OF SERVICE

I certify that I have this day served a copy of the foregoing Public Staff Investigation Report and Recommendations on Patrick T. Buffkin, the Attorney for WRI, by electronic delivery upon agreement of the receiving party.

This, the 20th day of December, 2021.

Electronically submitted
/s/ William E. Grantmyre