BEFORE THE

NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. W-1305, SUB 35

DOCKET NO. W-1300, SUB 77

REBUTTAL TESTIMONY AND EXHIBITS OF

D. LOGAN ON BEHALF OF

WLI INVESTMENTS, LLC

NOVEMBER 16, 2022

I. INTRODUCTION AND BACKGROUND

Q: PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND PROFESSIONAL BACKGROUND.

A: My name is D Logan. My business address is 60 Gregory Rd., Suite 1, Belville, NC 28451. I am the Manager of WLI Investments, LLC, a corporate entity formed to carry out development activities in Salters Haven at Lea Marina. I am also an officer of my family-owned real estate development enterprise that operates as Logan Developers, Inc., although this dispute only involves one of our companies, WLI Investments, LLC. Our primary line of business is the development of real property for the construction of single-family home subdivisions in North Carolina, South Carolina, and Georgia. I have over 30 years of experience in the business.

Q: ARE YOU THE SAME D LOGAN THAT FILED DIRECT TESTIMONY AND EXHIBITS IN THIS PROCEEDING ON OCTOBER 3, 2022?

A: Yes, I am.

Q: WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A: The purpose of my rebuttal testimony is to respond on behalf of WLI Investments, LLC (WLI Investments), to the testimony and exhibits filed on behalf of the Respondents, Old North State Water Company, LLC (ONSWC), and Pluris Hampstead, LLC (Pluris), and to provide additional evidence in support of the allegations of the Complaint and my direct testimony.

Q: HAVE YOU REVIEWED THE TESTIMONY AND EXHIBITS FILED BY THE RESPONDENTS?

A: Yes, with the assistance of my staff and our company's attorneys, I have reviewed the testimony and exhibits filed by Maurice Gallarda, Jerry Tweed, and Michael Gallant on behalf of Pluris and the testimony and exhibits filed by John McDonald on behalf of ONSWC.

Q: WHAT IS YOUR RESPONSE TO THE TESTIMONY AND EXHIBITS FILED BY THE RESPONDENTS?

A: Generally, I find the Respondents' testimony to be unresponsive to the primary allegations related to the enforcement of the Development Agreement. In addition, I find that the Respondents' testimony addresses matters that are not relevant to the resolution of this matter and that confuse the issues by making inappropriate comparisons or applying incorrect legal standards. I will address each of these topics in detail in this rebuttal testimony as follows:

1. Contract issues related to enforcement of the Development Agreement;
2. Issues related to Pluris' unlawful control over ONSWC prior to Commission approval of the transfer of the franchise;
3. Issues related to Pluris' unlawful discrimination against the Lea Lots project; and
4. Issues related to the Majestic Oaks wastewater treatment plant (WWTP), the Pluris membrane bioreactor (MBR) WWTP in Hampstead, and the operation of utility systems with grinder pumps and low-pressure facilities, with respect to the public interest and state policy.

Q: WHAT IS YOUR UNDERSTANDING OF THE RESPONDENTS' ARGUMENTS RELATED TO INTERPRETATION AND ENFORCEMENT OF THE DEVELOPMENT AGREEMENT?

A: This issue was addressed in the testimony of witnesses McDonald, Gallant, Tweed, and Gallarda. All of these witnesses make the same argument: that by identifying the components of an "ESA Wastewater Service Line" to include a 4" wastewater service tap, a clean out, and an elder valve, Section 5.3 of the Development Agreement prohibits the installation of grinder pumps and low-pressure facilities in the Lea Lots.

Q: WHAT IS YOUR RESPONSE TO THAT ARGUMENT?

A: This argument is based on an incorrect interpretation of the Development Agreement, is contradicted by other evidence of the parties' intent, and is inconsistent with ONSWC's conduct in the course of performance of the Development Agreement. First, this argument is an incorrect interpretation of the Development Agreement because it does not address the basic argument that I made in my direct testimony: that the definition of "wastewater service line" under Section 5.3 is the same as under Section 4.3. Under Section 4.3, ONSWC accepted phases of the wastewater collection system in Salters Haven that included grinder pumps and low-pressure facilities. Because the language in Section 4.3 and 5.3 are substantively identical, the result should be same. However, relying on Section 5.3, ONSWC now refuses to accept a wastewater collection system that includes the same grinder pumps and low-pressure facilities in the Lea Lots. It is clear from ONSWC's conduct that it thought grinder pumps and low-pressure facilities were allowed under Section 4.3. To get a different result under Section 5.3, the language used would need to be different, to demonstrate the parties' intent. That is not the case here.

In addition, the Respondents' arguments ignore the full context of the language and structure of the Development Agreement. For example, the Development Agreement defines the term "Subdivision" to include both Salters Haven and the Lea Lots. Given that definition, it is arguable that Section 4.3 allows WLI to install grinder pumps and low-pressure facilities in the entirety of Salters Haven and the Lea Lots. Section 4.3 references an "On-Site Wastewater Collection System." Under Section 1.28, the "On-Site Wastewater Collection System" may consist of "pressure sewer lines," and "all appurtenant equipment that will deliver wastewater produced by the houses within the Subdivision." Thus, because the Lea Lots are included in the term "Subdivision," and because Section 4.3 authorizes WLI Investments to install grinder pumps and

low-pressure facilities within the Subdivision, WLI should be allowed to utilize grinder pumps and low-pressure facilities in the Lea Lots.

In addition, even if Section 4.3 does not address the Lea Lots (as included in the defined term "Subdivision"), Section 5.3 uses nearly identical language. For instance, Section 4.3 uses the term "On-Site Wastewater Collection System," which, as I said earlier, is defined to include grinder pumps and low-pressure facilities. Section 5.3 uses a similar term, "ESA Wastewater Collection System." Although undefined, it is illogical that the On-Site and ESA Wastewater Collection System would use the same operative term—"Wastewater Collection System"—but would allow or require different services. It is clear that WLI Investments and ONSWC agreed that grinder pumps and low-pressure facilities could be installed throughout Salters Haven and the Lea Lots. Further, Section 4.2 and 5.2 both use a phrase "all necessary components" without making clear who gets to decide what is or is not a "necessary component." Here again, ONSWC's conduct in accepting the wastewater collection system phases in Salters Haven tends to demonstrate that ONSWC has conceded that grinder pumps and low-pressure facilities are "necessary components" of the wastewater collection system within the "Subdivision."

Q: SINCE YOU FILED YOUR DIRECT TESTIMONY, HAVE YOU OBTAINED ADDITIONAL EVIDENCE OF THE PARTIES' INTENT AT THE TIME THE DEVELOPMENT AGREEMENT WAS SIGNED?

A: Yes. As part of our preparation for filing this rebuttal testimony, my attorney took the deposition of Michael J. Myers. Mr. Myers stated in his deposition that he was a member of ONSWC at the time the Development Agreement was signed and was the primary person who negotiated the terms of the Development Agreement on behalf of ONSWC. In fact, Mr. Myers and I communicated directly with each other for several months prior to signing the Development

Agreement in December 2018. I would highlight three portions of Mr. Myers' deposition testimony, which I believe confirm that grinder pumps and low-pressure facilities were specifically contemplated and agreed to by ONSWC.

First, in his deposition Mr. Myers stated unequivocally that "the same rules that apply to one would – in terms of gravity versus low pressure would apply to the other." Here, Mr. Myers is referencing the language in Sections 4.3 and 5.3 of the Development Agreement, and what those two provisions would allow or prohibit. As he clearly says, the parties anticipated that gravity or low-pressure facilities could be used both in Salters Haven and in the Lea Lots.

Second, Mr. Myers was asked directly whether it was understood between ONSWC and WLI Investments that grinder pumps and low-pressure facilities might be installed in both the Lea Lots and Salters Haven, and he responded, "correct."

Finally, Mr. Myers stated that he and I had discussion about this subject and summarized the parties' understanding about the components of the wastewater collection system as follows: "discussions center around two technologies, a gravity sewer and low-pressure sewer…it was just discussed that Old North State would accept both – preferably gravity, but would accept low pressure."

In short, there is no better evidence as to the intent of the parties than the sworn statements of Mr. Myers and me, the two individuals who negotiated the terms of and signed the Development Agreement on behalf of the WLI Investments and ONSWC, the two companies that are parties to that Agreement.

Q: HAVE YOU GAINED OTHER EVIDENCE THAT IS RELATED TO THE APPROPRIATE INTERPRETATION OF THE DEVELOPMENT AGREEMENT?

A: Yes, we also took the depositions of Mr. Gallarda and Mr. McDonald, who both acknowledged that the Development Agreement was "ambiguous" or "confusing." I agree with that assessment and because the Development Agreement is ambiguous or confusing, and if the Commission determines that it cannot resolve this dispute based on the language of the contract, it will be necessary to make reference to other evidence to interpret the Development Agreement in a way that is consistent with the parties' intentions at the time the Development Agreement was signed. Again, my direct testimony and the sworn statements of Mr. Myers about the parties' agreement that grinder pumps and low-pressure facilities are the best evidence that can be referenced to determine the parties' intent.

Q: IS THERE ADDITIONAL JUSTIFICATION FOR THE COMMISSION TO INTERPRET THE DEVELOPMENT AGREEMENT TO ALLOW WLI INVESTMENTS TO INSTALL GRINDER PUMPS AND LOW-PRESSURE FACILITIES IN THE LEA LOTS?

A: Yes, there is. If the Commission determines that it cannot resolve this dispute based on the language in the Development Agreement or the evidence provided in my direct testimony and in Mr. Myers' deposition as to the parties' intent and the course of performance under the contract, the Commission can still interpret and enforce the Development Agreement in a way that allows WLI Investments to install grinder pumps and low-pressure facilities. This would be justified based on WLI Investments' reliance on ONSWC's statements and expressions that it would accept grinder pumps and low-pressure facilities as parts of the wastewater collection systems in Salters Haven and the Lea Lots. That statement was made first by Mr. Myers during the course of negotiations leading up to the execution of the Development Agreement, and was confirmed by ONSWC accepting phases of the wastewater collection system installed in Salters Haven. WLI Investments relied on that statement and conduct in making a contract with Mr. Bert Lea and in

designing the wastewater collection system with grinder pumps and low-pressure facilities both in Salters Haven and in the Lea Lots. As I stated in my direct testimony, ONSWC never expressed any concern about or opposition to grinder pumps and low-pressure facilities until Pluris became involved as the purchaser of the system. My attorneys advise me that this is an appropriate situation in which to apply the contract law principle of estoppel, because WLI Investments reasonably relied upon statements and conduct by ONSWC that established an expectation that ONSWC would accept a wastewater collection system with grinder pumps and low-pressure facilities.

Q: DO YOU BELIEVE THAT THERE IS ANY OTHER JUSTIFICATION FOR ENFORCING THE DEVELOPMENT AGREEMENT IN A WAY THAT ALLOWS WLI INVESTMENTS TO INSTALL GRINDER PUMPS AND LOW-PRESSURE FACILITIES IN THE LEA LOTS?

A: Yes, I do. In consultation with my attorneys, we determined that the contract law principle of waiver could also be applied in this dispute such that the Commission could find that by ONSWC's statements and conduct indicating that grinder pumps and low-pressure facilities would be accepted as components of the wastewater collection systems in Salters Haven and the Lea Lots and by actually accepting grinder pumps and low-pressure facilities in Salters Haven phases, ONSWC has waived the technical requirements of Section 4.3 and Section 5.3 of the Development Agreement.

Q: DO YOU HAVE A RESPONSE TO PLURIS AND ONSWC'S ARGUMENTS ABOUT THE REASONABLENESS OF REQUIRING PLURIS TO ACCEPT A WASTEWATER COLLECTION SYSTEM THAT INCLUDES GRINDER PUMPS AND LOW-PRESSURE FACILITIES?

A: Yes, I do. The arguments that are made in the Respondents' testimony are misleading and irrelevant. The Respondents seem to believe that the issue with grinder pumps and low-pressure facilities is solely an attempt by WLI Investments to reduce its upfront costs and shift the expenses associated with grinder pumps to the homeowners. That is misleading for two reasons: first, it ignores the reality that WLI Investments relied upon ONSWC's statements and conduct in designing a low-pressure wastewater collection system; and second, it presumes that the homeowners failed to understand the conditions of purchasing a home in this area. I will address both of those reasons in more detail below, but I would first emphasize that the issue of general reasonableness of grinder pumps and low-pressure facilities is a separate issue than the issues related to enforcement of the Development Agreement.

On the first point, I first reviewed the plans for a gravity sewer system and the proposal for the construction work that is attached to Mr. Gallant's testimony. While this is a different configuration than what I have been advised would be required, because it only has one lift station instead of the two that I believed would be required, it remains a significant expense that will be prohibitive to developing the Lea Lots. Mr. Gallant received a construction estimate of $676,784.00 to install a gravity sewer system. My estimate of the costs to construct a low-pressure system is approximately $350,000. This $326,784 price difference is significant, and represents a partial extent of the harm to WLI Investments from reasonably relying on ONSWC's statements and conduct that indicated that a low-pressure wastewater collection system would be acceptable in both the Lea Lots and Salters Haven.

Second, it is also possible that Mr. Gallant's estimate of $676,784 understates the true cost of construction. It is my understanding and experience that Pluris requires its pump stations to be outfitted with features above and beyond the State requirements. Further, it is my understanding

and expectation that Pluris would accept ownership of and operate any pump station built on the Lea Lots. The "pump station" referenced in Exhibit 2 to Mr. Gallant's pre-filed testimony indicates that a completed pump station would cost $225,000: $190,000 for the pump station itself, plus an additional $15,000 and $20,000 for electrical and a valve vault, respectively. It is unclear if those prices cover the additional features Pluris demands. In addition, I noted the following deficiencies in the cost estimate that Mr. Gallant received: 1) I saw no estimated cost or contingency for the possibility that "bad dirt" (usually, "bad dirt" consists of hard clay that makes excavation work difficult or impossible) would need to be removed and replaced with quality fill dirt. In my experience this is a common necessity when excavating in this part of Pender County; 2) I saw no estimated cost or contingency for trenching or de-watering the excavation site of the pump station, which I believe would be necessary given the shallow depth of the water table; and 3) the estimated costs did not have a line item for sealing the wet well, which I understand is a requirement for a pump station constructed in the flood plain. I believe that all of these factors make the estimate provided by T & H Construction of North Carolina, Inc. inaccurate or, at the least, incredible; neither I nor the Commission have any knowledge of the specific parameters in which he was asked to operate, because there is insufficient detail in the estimated construction costs. Finally, I would note that in the present inflationary environment, a cost estimate received today represents only the costs if the work and materials were procured today, and the costs would likely increase significantly over a relatively short time period.

Third, I believe that the design provided by Mr. Gallant would violate WLI Investment's contract with the prior owner of the Lea Lots, Bert Lea. Pursuant to that agreement, WLI Investments agreed to provide water and sewer services to the Lea Lots. However, WLI agreed that any pump station would be located in Salters Haven. It currently would not be possible to tie

the Lea Lots into the Salters Haven sewer system. The location of the pump station and depth of the gravity-fed collection facilities installed in Salters Haven were selected in a way that was most beneficial for Salters Haven without regard to the Lea Lots. That selection was made because ONSWC, and specifically Mike Myers, promised that the Lea Lots could be serviced by grinder pumps and low-pressure facilities. Had I known that Pluris would ignore ONSWC's commitment to allowing grinder pumps and low-pressure facilities, it would have changed the way that WLI Investments constructed the sewer system in Salters Haven.

Mr. McDonald acknowledged in his depositions that "excessive costs" is a relevant factor in a utility's decision to accept a wastewater collection system that is gravity versus low-pressure. To look at it another way, it is unreasonable to require a more expensive wastewater collection system than is necessary to accomplish the requirements of the Development Agreement, particularly when WLI Investments relied upon ONSWC's statements and conduct in designing the wastewater collection systems for Salters Haven and the Lea Lots.

On the second point, as I first detailed in my direct testimony and exhibits, the restrictive covenants for Salters Haven and the Development Agreement place the responsibility for grinder pump maintenance and operation on the homeowner and alert the homeowner to this fact by prominent language in the contract and the restrictive covenants by prominent, all caps language. Further, we have already put in place a contract between the Salters Haven homeowner's association and a qualified grinder pump service provider. In addition, during home showings and tours potential buyers of lots with grinder pumps will see the grinder pump alarm that is located inside the house and the agent marketing the property will be prepared to explain grinder pump operation and maintenance to the potential buyer. Thus, the presumption that the homebuyer doesn't understand what they are purchasing is simply false. Viewed in this way, it is completely

reasonable for a fully informed buyer to make a decision for themselves whether to purchase a home serviced by a grinder pump, and it is inappropriate for a public utility's policy to have the effect of denying a homebuyer the opportunity to purchase that home.

In addition, on the issue of reasonableness of grinder pumps generally, I would note that several other sewer service providers in coastal counties have written policies and rates or charges related to grinder pumps, and I have attached as Logan Rebuttal Exhibit No. 1 to my testimony examples of these policies or rates and charges from Cape Fear Public Utility Authority (CFPUA), Brunswick Regional Utility Authority/H2GO, Brunswick County, and Pender County. Throughout these documents, one can see that these utility providers have adopted written policies regarding grinder pumps and low-pressure facilities, rates and charges for installation and service of grinder pumps, and even produced customer informational materials to explain those policies in plain English and by using graphics.

Further, with the assistance of my attorneys I found in the Commission's files additional evidence on the reasonableness of grinder pumps. For example, on June 28, 2021, in Docket No. W-218, Sub 526A, Aqua North Carolina, Inc. filed a Verified Response to Reply Comments of the Public Staff and Notice of Public Staff's Plan to Present Comments and Recommendations at the Commission's July 6, 2021, Regular Staff Conference. In fn. 3 of that filing, Aqua states that

> The Public Staff carefully asserts at page 3 of its Reply Comments that "…the primary purpose of an individual grinder pump station is to serve the connected premise…." While that statement may be true, it ignores the fact that grinder pumps are essential elements of the entire permitted pressurized sewer collection system and that their proper operation (even individually) is absolutely necessary and imperative to ensure, to the maximum extent possible, the proper function of the system as a whole, consistent with environmental and public health concerns.

In other places in that same filing, Aqua NC describes grinder pumps as "integral and indispensable parts of the wastewater collection systems permitted by NC DEQ." I include reference to this

verified statement as additional evidence that grinder pumps are reasonable, necessary components of wastewater collection systems, both in the regulated public utility context and for the unregulated publicly-owned systems that I mentioned earlier. Whether grinder pumps are reasonable and necessary depends more on the geography of the service territory than the service provider's regulatory status.

I am including the documents as an exhibit to my rebuttal testimony for two reasons: first, these documents provide additional evidence that grinder pumps are necessary in this part of the state, and that it is reasonable for a utility operating in this part of the state to allow the use of grinder pumps; and second, as evidence of what a reasonable utility would do operationally to accommodate grinder pumps as necessary components of wastewater collection systems. These utilities have these written policies, rates, and charges because these utilities recognize that grinder pumps are a necessity for the development of land situated in low-lying areas. Even outside of the coastal areas, there are parts of the state that require the use of grinder pumps to allow for sewer service required to develop land. In fact, ONSWC has grinder pumps in its Briar Chapel service area and the Commission recently addressed issues related to ONSWC's ability to charge customers for grinder pump service.[1] Notably, the Public Staff did not raise the issue of the general reasonableness of grinder pumps and low-pressure facilities in that proceeding. I believe that this Commission decision and the absence of opposition by the Public Staff implies that grinder pumps are reasonable, because the Commission would not have approved the use of grinder pumps and the Public Staff would not have remained silent on the general reasonableness issue if these facilities caused serious problems or significant expenses. At the very least, the Commission's

[1] Order on Clarification, In re: Petition by Old North State Water Company, LLC, for an Order on Clarification for Responsibility for Grinder Pumps in its Briar Chapel Subdivision in Chatham County, No. W-1300, Sub 81 (*issued* Oct. 10, 2022).

decision and the other utilities' policies tend to demonstrate that grinder pumps and low-pressure systems are not unreasonable as components of a wastewater collection system when, for example, a gravity sewer system is excessively expensive or necessary to overcome topographical challenges.

Q: HAS PLURIS CHANGED ITS POSITION ON ITS POLICY RELATED TO GRINDER PUMPS?

A: Yes. During the course of this dispute, Pluris has offered varying explanations of its position on grinder pumps. Initially, Pluris stated that it would not accept grinder pumps, with no further explanation. Then, Pluris stated that it did not have a policy against grinder pumps, but it was the Development Agreement that did not allow the installation of grinder pumps. Next, Pluris stated that its policy was to not accept new wastewater collection systems that have grinder pumps. Finally, Pluris stated that its policy was to not accept new wastewater collection systems that have grinder pumps unless an engineer can demonstrate that a gravity system cannot be built. Throughout this entire experience, Pluris has never actually had a written policy related to grinder pumps and the Commission has never approved any policy related to grinder pumps for Pluris.

Q: DO YOU BELIEVE THAT THIS IS A REASONABLE WAY FOR PLURIS TO DO BUSINESS, AND IF NOT, WHY?

A: No, I do not think that this is a reasonable way for Pluris or any other regulated utility to do business. Public utilities' policies impact other industries, such as the homebuilding industry. Homebuilders need certainty and predictability to conduct business and a written policy vetted and approved by the Commission would allow for all homebuilders to understand the utility's "rules of the game." Some hallmarks of reasonableness of a public utility's policy are that the policy is written, clear, understandable, and stable. Pluris' policy is none of these things.

As an example, even under the most recent version of Pluris' "policy" I cannot tell how an engineer would be able to satisfy Pluris that a gravity sewer system cannot be built. The reality of modern engineering is that with enough time and money a gravity sewer system can be built virtually anywhere. However, in the real-world time and money are important business considerations and in a world of limited time and money, grinder pumps and low-pressure sewer commonly takes the place of a gravity system with lift stations, as demonstrated by the other utility service providers' policies attached to this rebuttal testimony and referenced above. The effect of Pluris' "policy" is that I would pay an engineer to design a system and then enter negotiations with the utility's engineer over whether or not the system is the appropriate design. Of course, the utility holds unequal bargaining power in that negotiation, knowing that time and money are key business considerations and that sewer service is essential to facilitating the development of land.

Viewed in this way, Pluris puts itself in the role as "gatekeeper" to the beneficial development of real property in its service areas. I find that to be in conflict with State law and policy that favors the beneficial use of land, subject to reasonable regulation. In this situation, despite there being a legal product that is desired in the marketplace, willing and informed buyers and sellers, a development plan that is consistent with local zoning, and development activities that are consistent with state law and regulation to protect the environment, Pluris is blocking the project from going forward based solely on its unwritten and changing policy related to grinder pumps. I find that to be unreasonable conduct.

Other evidence also demonstrates that Pluris' most-recent explanation for its policy is unreasonable. In particular, it contradicts Mr. McDonald's deposition testimony. Mr. McDonald acknowledged in his deposition that "excessive costs" is a relevant factor in a utility's decision to accept a wastewater collection system that is gravity versus low-pressure. By requiring an engineer

to demonstrate that a gravity system cannot be built without considering cost or feasibility, Pluris appears to be contradicting that testimony.

In addition, Mr. Gallant's testimony is the first time I have ever heard someone from Pluris express concern about the function and utility of grinder pumps and low-pressure facilities. However, some of his assumptions are incorrect. For example, he says that in a power outage, an individual grinder station has the capacity to store only a "small volume" of sewage. As I understand state law, grinder stations must hold 24 hours' worth of sewage flow or otherwise must have backup power. Mr. Gallant states, without further detail, that in a gravity system, sewage can still flow in a power outage to the larger single lift station wet well and DEQ requires that those lift stations have emergency backup systems in place or available. My understanding is that pump-and-haul is the backup system that most utilities would use, and it is my understanding that the wet well would not be sized to handle 24 hours of flow from the system. In that sense, grinder pumps actually have more storage available for emergency situations that a wet well would have. In my experience, because of these factors, grinder pumps and low-pressure facilities rarely result in disruptions in service when there is a power outage. Moreover, I found nothing in the Respondents' testimony that addresses the specific situation here where the restrictive covenants for Salters Haven make it clear that homeowners, and not the utility, are responsible for grinder pump maintenance and uninterrupted power supply, by the use of prominent, all caps language. The Development Agreement contains the same prominent, all caps language.

Q: IS THERE ANY OTHER TESTIMONY RELATED TO THE CONTRACT ISSUES THAT YOU WOULD LIKE TO OFFER?

A: Yes. First, I noted that Mr. Gallarda states in his testimony that Pluris would assume the obligations of the Development Agreement and that Pluris would abide by the Commission's

decision if the Commission determines that WLI Investments can install grinder pumps and low-pressure facilities in the Lea Lots, consistent with the Development Agreement. With respect to both statements, this was the first time that Pluris communicated this to WLI Investments. Up until this point, it was unclear whether Pluris would take on the responsibilities under the contract because a key provision of the Development Agreement requires the expansion of the Majestic Oaks WWTP, which we now know Pluris and ONSWC do not intend to do in light of the proposed acquisition. Also, up until this point, we have been informed that Pluris would litigate this issue until it prevailed. While the statements that Pluris will "step into the shoes" of ONSWC does help to reduce some of the uncertainty that is facing WLI Investments, it is the kind of assurances that we have been seeking from Pluris since this dispute first came up. Second, and in addition, I would again like to make clear that WLI has a substantial reliance interest in being able to use grinder pumps and low-pressure facilities within the Lea Lots. The sewer system in Salter's Haven was constructed in a certain way, based on ONSWC's representation that grinder pumps would be accepted in the Lea Lots. Had I known that Pluris would ignore ONSWC's commitment to allowing grinder pumps and low-pressure facilities, it would have changed the way that WLI Investments constructed the sewer system in Salters Haven.

In addition, in response to data requests we received a copy of an email in which Mr. Tweed explains his understanding of the obligations under the Development Agreement. I have attached a copy of this email to this rebuttal testimony as Logan Rebuttal Exhibit No. 2, because I think it may explain important circumstances around Pluris' position in this dispute. In that email dated June 24, 2020, Mr. Tweed explains his understanding of the Development Agreement to Mr. Gallarda, but makes no mention of grinder pumps in Salters Haven and the Lea Lots. He did make note that the Grey Bull service area would include grinder pumps that would be the

homeowner/customer responsibility, and concluded his email by stating "I see nothing else exciting in this contract." I believe that this tends to demonstrate that Pluris either did not understand the requirements of the Development Agreement or overlooked key provisions of the Development Agreement, and it may help explain why this dispute came about. This evidence also tends to support my view that the Respondents are making an after-the-fact justification that is different than what the Development Agreement requires, and different than what WLI Investments and ONSWC agreed to. If Pluris was less than diligent in its contract review process, I believe that it would be unfair for the Commission to penalize WLI Investments by adopting the Respondents' after-the-fact justification for their position, which is contrary to the requirements of the Development Agreement, the intent of the parties at the time the Development Agreement was signed, and the course of performance taken by ONSWC in accepting grinder pumps and low-pressure facilities.

Q: DO YOU HAVE ANY ADDITIONAL EVIDENCE RELATED TO THE CLAIM THAT PLURIS CONTROLLED ONSWC PRIOR TO COMMISSION APPROVAL OF THE TRANSFER APPLICATION?

A: Yes, I do. While I have seen the Respondents' testimony that Mr. McDonald made the decision to not sign the permit for the wastewater collection system in the Lea Lots, I believe that this is an after-the-fact justification that is inconsistent with the circumstances that I detailed in my direct testimony. Again, there was no problem with ONSWC accepting the low-pressure wastewater collection system until Pluris became involved. In addition, Mr. McDonald stated in his deposition that a factor in his decision to not sign the permit application was that Pluris would not complete the acquisition of ONSWC's service territories if he signed the permit application for the low-pressure wastewater collection system. While he described Pluris' opposition as "a

factor," he also could not identify any other specific factor other than a general objection that "grinder pumps are difficult in North Carolina, full stop." In the absence of any other explanation and in light of all the evidence, there is only one logical inference to be drawn and that is that Pluris's influence or control was the only reason ONSWC changed its position and refused to accept grinder pumps and low-pressure facilities in the Lea Lots.

Q: DO YOU HAVE A RESPONSE TO THE RESPONDENTS' TESTIMONY RELATED TO THE CLAIM THAT PLURIS IS DISCRIMINATING AGAINST WLI INVESTMENTS WITH RESPECT TO THE REFUSAL TO ACCEPT GRINDER PUMPS IN THE LEA LOTS?

A: Yes, I do. I believe that Pluis has misunderstood the appropriate standard for discrimination under N.C. Gen. Stat. § 62-140. First, Mr. Gallarda incorrectly interprets § 62-140 as requiring a customer-utility relationship. The statute does not use the word "customer," it uses the word "person." "Person" is defined at N.C. Gen. Stat. § 62-3(21) to mean "a corporation, individual, copartnership, company, association, or any combination of individuals or organizations doing business as a unit, and includes any trustee, receiver, assignee, lessee, or personal representative thereof." Thus, it is clear that the prohibition on discrimination applies more broadly and protects "persons," some of whom would not be customers of the utility, from unreasonable prejudice or disadvantage. It is also clear that WLI Investments is a "person" as defined in the Public Utilities Act. In addition, I would reiterate here my direct testimony related to the issue of "service," as defined in N.C. Gen. Stat. § 62-3(27), which is a broad definition and includes the type of service we are dealing with in this dispute. This is a key aspect of the discrimination claim because N.C. Gen. Stat. § 62-140 applies to "rates and service." Mr. Gallarda fails to address these details and misunderstands the prohibition on discrimination.

Second, Mr. Gallarda makes an incorrect comparison between how Pluris treated my other companies with respect to other development projects versus the Salters Haven and Lea Lots projects. The appropriate comparison is between the Lea Lots project and other similarly situated development projects or service areas. As I demonstrated in my direct testimony, Pluris has two nearby service areas where grinder pumps and low-pressure facilities are present, Coastal Plantation and Wyndwater. I understand that these areas were developed prior to Pluris becoming the sewer provider, but Pluris refuses to acknowledge the reality that the reason there are grinder pumps in Coastal Plantation and Wyndwater is the same reason that I need to install a low-pressure system in the Lea Lots: the low-lying areas cannot be economically serviced with a gravity sewer system. In short, based on what I have learned in my 30 years of experience developing real estate, the lots where grinder pumps are present in Coastal Plantation and Wyndwater likely would not have been developed if the incumbent utility at the time took the approach that Pluris is taking with the Lea Lots.

If the Commission views this situation with this appropriate comparison in mind, I think it would be reasonable to determine that much of Mr. Gallarda's testimony on this issue is irrelevant, including the 2018 email from my administrative assistant and the dealings with my other companies with respect to other development projects where grinder pumps were not needed.

Q: WHAT IS YOUR RESPONSE TO THE RESPONDENTS' ARGUMENTS RELATED TO THE MAJESTIC OAKS WWTP?

A: I think that this is a distraction from the main issues in this case. As I stated in my direct testimony, I understand that the Majestic Oaks WWTP is in need of significant investments and improvements. That does not change the fact that ONSWC signed a contract agreeing to expand the Majestic Oaks WWTP. I also understand that the subsequent actions by ONSWC and Pluris in

proposing the acquisition of ONSWC's service territories and shifting to the bulk treatment arrangement out of Pluris Hampstead's WWTP, make it unlikely that the Commission would enforce the contract agreement to expand Majestic Oaks WWTP. As I also said in my direct testimony, I think that the use of the Pluris Hampstead WWTP could be a better plan to make wastewater treatment service available in the Pender County area.

The consequence of that changed plan is the real issue in this case, because WLI Investments is now dealing with Pluris, which refuses to perform on the Development Agreement in the same way that ONSWC did. The language of the contract has not changed, only the plan for wastewater treatment service and the utility who is providing that service. Again, as I stated in my direct testimony, I ask that the Commission protect WLI Investments' contract rights by declaring that the Development Agreement allows the installation of a wastewater collection system with grinder pumps and low-pressure facilities in the Lea Lots, consistent with the appropriate interpretation of the contract based on the language in the Development Agreement, ONSWC's course of performance, ONSWC's waiver, or ONSWC's statements and representations that WLI Investments relied upon in expecting to be able to install a wastewater collection system with grinder pumps and low-pressure facilities.

Q: DO YOU HAVE A RESPONSE TO THE RESPONDENTS' TESTIMONY ABOUT THE PUBLIC STAFF'S POSITION ON THIS CASE?

A: Yes. I think that the Respondents' have overstated and misrepresented the Public Staff's position based on the statements and opinions by one attorney who works for the Public Staff, which were made many months ago and are now stale. My attorneys have reported to me similar statements made by the same individual, again, many months ago. However, since the filing of the complaint we have been informed that the Public Staff regards this as dispute that the parties or

the Commission should resolve. The Public Staff, as an agency, has taken no position on the issues in this case in any formal or binding way, nor has the Public Staff intervened in this proceeding or otherwise made any filings. So, I think the Respondents have been disingenuous with the Commission in representing that the Public Staff has taken a position on any issues in this case, despite what they may have heard from one attorney that works at the Public Staff.

Q: DO YOU RECOGNIZE THAT MR. GALLARDA HAS RAISED ISSUES WITH GRINDER PUMPS THAT COULD IMPACT OTHER CUSTOMERS WHO DO NOT USE GRINDER PUMPS?

A: Yes, I do. I had seen the picture of the Barbie doll stuck in a grinder pump station prior to Mr. Gallarda including that photo in his testimony. I do not think that this demonstrates any problems with grinder pumps, but a problem with customer behavior. The issues that Mr. Gallarda speaks to with respect to potential problems inside the MBR WWTP are important considerations; however, as I stated in my direct testimony, I believe that Mr. Gallarda has overstated those concerns. I also am convinced that Pluris has been less than diligent in investigating other solutions, for example, additional, smaller screens can be installed in the WWTP to deal with the potential problems inside the WWTP. Basically, a utility's decision to allow grinder pumps is an operational consideration: if the utility operates in an area where parts of its service territory cannot be economically served by gravity sewer, then it faces a trade-off of allowing grinder pumps to increase its customer base and facilitate growth and development in its service area and put in place the operational protocols to address any issues, or refusing to allow grinder pumps and accept as reality parts of its service territory will not be developable, because there is no access to wastewater treatment services. I reference here the documents included as Logan Rebuttal Exhibit No. 1 as evidence of reasonable operational protocols put in place by other sewer service providers

in the Pender County area, and emphasize that Pluris has appears to have taken none of these reasonable steps.

Also, Mr. Gallarda discussed this issue in his deposition. He talked about the problem in the context of the percentage of grinder pumps on a system, stating, that the more grinder pumps are on a system the more problems result in the WWTP. That seems possible, so I did some additional investigation into the service area of Pluris Hampstead's WWTP. Mr. Gallarda's direct testimony indicates that Pluris' WWTP currently provides wastewater services to about 1,100 homes, as well as commercial developments and schools. Of those 1,100 customers, Mr. Gallarda indicates that 16 residential customers are served by grinder pumps. Assuming that the Commission approves the transfer and Salters Haven and the Lea Lots are fully built out with the 30 additional grinder pumps needed in the Lea Lots, Pluris Hampstead's WWTP will serve at least 1,500 customers, of which only 91 will have grinder pumps. That is roughly 6 % of Pluris Hampstead's customers, a number that is so small I do not believe that serious problems will result.

My belief is confirmed by the experience of Pluris' sister entity, Pluris, LLC, which operates a MBR WWTP in Sneads Ferry, North Carolina. During his deposition, Mr. Gallarda testified that the Sneads Ferry WWTP processed wastewater from 7,000 homes, 700 of which are on grinder pumps. The percentage of residential customers served through the Sneads Ferry WWTP is thus approximately 10%, and Mr. Gallarda explained in his deposition that the problems in the Sneads Ferry WWTP were reduced as additional homes not serviced by grinder pumps came onto the utility system. By comparison, the Pluris Hampstead WWTP will have roughly 6% of its residential customers using grinder pumps.

I can understand that Pluris may be concerned that this case would establish precedent that would require Pluris to accept grinder pumps in all of its service territories. I think that the

appropriate way for Pluris to deal with that is to first write a contract that is clear on the issue of grinder pumps. Second, Pluris should be required to apply to the Commission for approval of whatever policy it wants to make about grinder pumps so that all interested parties can have an opportunity to be heard and the Commission can receive evidence on the true nature of the "problems" that grinder pumps may or may not cause. Third, I think it would be appropriate for the Commission to limit the precedential effect of the decision in this case to the unique facts and circumstances, based on the language in the Development Agreement, the statements and conduct of ONSWC, and the timing of the transfer or acquisition during the executory period of the contract.

Q: IN LIGHT OF YOUR RESPONSES AND THE ADDITIONAL EVIDENCE OBTAINED SINCE YOU FILED YOUR DIRECT TESTIMONY, DO YOU CONTINUE TO REQUEST THE FULL RELIEF SET OUT IN THE COMPLAINT?

A: Yes. The relief requested in the Complaint will resolve this matter. I will not recite WLI Investments' claim for relief here, but I will reiterate that nothing in the Respondents' testimony or the additional evidence we have obtained has resolved the dispute. Thus, WLI Investments continues to request the relief stated in the Complaint as a just result in this proceeding that will further the public interest.

Q: IS THERE ANY OTHER TESTIMONY YOU WISH TO PROVIDE IN RESPONSE TO THE RESPONDENTS' TESTIMONY AND EXHIBITS?

A: Yes. I have attempted to respond to the issues raised in the Respondents' testimony; however, I would reiterate that many of the issues raised by the Respondents are irrelevant and distracting from the primary issue in this case: the enforcement of the Development Agreement and the Respondents' conduct related to ONSWC's failure to perform on the contract. As I have

detailed in this testimony, the language of the Development Agreement contract, ONSWC's course of performance under the Development Agreement, ONSWC's waiver of the technical requirements of the Development Agreement, and ONSWC's statements and conduct that WLI Investments relied upon, all provide a basis for the Commission to enforce the Development Agreement against ONSWC (or Pluris as assignee) such that WLI Investments may install grinder pumps and low-pressure facilities in Salters Haven and the Lea Lots.

Q: DOES THIS END YOUR REBUTTAL TESTIMONY?

A: Yes, it does

CERTIFICATE OF SERVICE

The undersigned, Patrick Buffkin, certifies that a copy of the foregoing REBUTTAL TESTIMONY OF D LOGAN ON BEHALF OF WLI INVESTMENTS, LLC, has been served upon counsel for the Respondents herein, by electronic mail this the 16th day of November, 2022.

/s/ Patrick Buffkin

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