

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. W-1333, SUB 5

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of | | |
| Application by Currituck Water and Sewer, |) | |
| LLC, for a Certificate of Public Convenience |) | |
| and Necessity to Provide Water and Sewer |) | ORDER SCHEDULING SHOW |
| Utility Service to Carolina Village in |) | CAUSE HEARING |
| Currituck County, North Carolina, and for |) | |
| Approval of Rates |) | |

BY THE CHAIR: On August 16, 2023, Currituck Water and Sewer, LLC (Currituck) filed an Application for a Certificate of Public Convenience and Necessity and for Approval of Rates (CPCN Application) to provide water and wastewater utility service to the Carolina Village subdivision (Carolina Village) in Currituck County, North Carolina in accordance with N.C. Gen. Stat. § 62-110. Currituck filed amended and supplemental information on September 20, 2023, and November 14, 2023.

On February 14, 2024, the Commission issued an Order Scheduling Hearings, Establishing Discovery Guidelines, and Requiring Customer Notice.

On February 22, 2024, the Public Staff filed a motion to compel requesting that Currituck respond to certain discovery requests, which was granted by the Commission on March 5, 2024.

MOTION TO SHOW CAUSE

On March 26, 2024, the Public Staff filed a Motion to Show Cause in this docket requesting that Currituck be required to show cause why the Commission should not issue an order: (1) declaring Currituck a public utility; (2) assessing civil penalties against Currituck for violation of applicable statutes and Commission rules; (3) declaring the existence of an emergency warranting appointment of an emergency operator for the water and wastewater utility systems serving Carolina Village; and (4) appointing an emergency operator for these systems.

The Public Staff states that Carolina Village is a community of 149 mobile home sites. The land on which the mobile home sites are located is currently owned by Carolina Village MHP, LLC. The utility assets and most of the real property on which they are located are either owned or controlled by Currituck. Currituck operates the Carolina Village water and wastewater systems through a contractual arrangement with Envirolink.

Public Utility Status

Section 62-3(23)a.2 of the North Carolina General Statutes defines a public utility as “a person ... now or hereafter owning or operating in this State equipment or facilities for ... distributing or furnishing water to or for the public for compensation, or operating a public sewerage system for compensation.” N.C.G.S. § 62-3(23)a.2.¹ The Public Staff asserts that Currituck is a public utility because it is providing water and wastewater utility service to the residents of Carolina Village for compensation through its relationship with the owner of the mobile home park, Carolina Village MHP, LLC. In August 2023, the Public Staff contacted Currituck with questions about Currituck’s acquisition of the water and wastewater systems, including questions about the financial arrangement between Currituck, Envirolink, Carolina Village MHP, LLC, the mobile home park manager, and the park residents. According to the Public Staff, Currituck responded that since May 2023, Envirolink has been operating the systems without compensation from Currituck, the mobile home park owner, management, or residents. Currituck responded that prior to May 2023, Envirolink received compensation from the mobile home park owner. As discussed below, the Public Staff contends that Currituck’s responses are not consistent with documents Currituck provided in response to discovery requests.

The Public Staff states that Envirolink (acting on Currituck’s behalf) received direct compensation from the owner of the mobile home park for services rendered through May 2023. The Public Staff further contends that Currituck is, and has been, receiving indirect compensation from the owner of the mobile home park since May 2023. The Public Staff states that based on invoices from Envirolink to Carolina Village MHP, LLC for the months of July 2022 through December 2023, received in response to discovery requests, some, or all of the costs of operating and maintaining the water and wastewater systems are being charged back to the mobile home park owner through Envirolink. The charges passed through to the mobile home park owner include electricity, chemicals, parts and supplies, and testing. The Public Staff asserts that these types of costs are integral expenses for utility operations, which are borne by the utility owner and then generally recovered through rates approved by the Commission. According to the Public Staff, the costs of operating and maintaining the water and wastewater systems should be borne by the owner of the systems (Currituck) and not the owner of the mobile home park (Carolina Village MHP, LLC). The Public Staff argues that by paying those operating costs,

¹ The Public Staff states that in June 2023, prior to filing the CPCN Application, Currituck contacted the Public Staff seeking its support for a petition requesting that Currituck’s ownership and operation of the water and wastewater systems serving Carolina Village be exempt from Commission regulation. While investigating Currituck’s exemption petition, the Public Staff discovered discrepancies regarding when Currituck acquired the water and wastewater systems. The Public Staff states that Currituck entered into an Asset Purchase and Utility Construction and Maintenance Agreement (APA) with Equity First NC, LLC and CV-WWT, LLC to purchase the Carolina Village water and wastewater utility systems in October 2019. The APA was amended in August 2020, February 2022, and August 2023. The Public Staff contends that the precise date on which Currituck took ownership of the water and wastewater systems is unclear because of: (1) the way in which the APA and amendments are written; (2) the dates on the bills of sale for the wastewater utility asset and real property on which the water and wastewater systems are located; (3) the dates on real property records reflecting Currituck’s ownership and control of the systems; and (4) a retroactive modification of the closing date.

Carolina Village MHP, LLC is indirectly compensating Currituck for the water and wastewater services it is providing.

The Public Staff further contends that invoices from Envirolink to Carolina Village MHP, LLC also include a 15% mark-up that is direct compensation to Envirolink. The Public Staff contends that these invoices show the following: (1) by assessing and receiving the 15% mark-up, Envirolink is being compensated by the mobile home park owner despite Currituck's representations to the contrary; (2) Currituck is being compensated by not paying its own operating costs; and (3) the manner in which Envirolink invoiced Carolina Village MHP, LLC, did not change after May 2023, the month after which Currituck alleges Envirolink no longer billed or received compensation from the mobile home park owner.

Wastewater System Permit Violations

The Public Staff states that there is a history of noncompliance with environmental standards at the Carolina Village Collection System and Carolina Village Wastewater Treatment Plant (WWTP). According to the Public Staff, from January 1, 2020, through March 1, 2024, the North Carolina Department of Environmental Quality (NC DEQ) has issued 46 Notices of Violation & Intent to Assess Civil Penalty (NOVs) to the Carolina Village WWTP resulting in \$64,166 in fines and penalties. These NOVs have typically included monthly average limit exceedances for biochemical oxygen demand (BOD), nitrogen ammonia total, nitrogen nitrate total, nitrogen total, total suspended solids, and phosphorous total, monthly geometric mean exceedance for coliform, fecal membrane filtration, membrane fecal coliform broth, as well as frequency and monitoring violations.

The Public Staff further states that the Carolina Village Collection System has received three NOVs between January 1, 2020, and March 1, 2024. Two NOVs were issued in 2022 which identified inoperable lift station pumps with bypass pumps installed and a site inspection identifying that all lift stations have a type of temporary pump and float system that is not permitted for the lift stations. The Public Staff asserts that these conditions were still present as of February 21, 2024.

According to the Public Staff, NC DEQ's Drinking Water Watch website shows that between August 2018 and February 2024, NC DEQ issued 36 NOVs to the Carolina Village water system, which typically included violations for failing to monitor coliform and chlorine residual and failing to perform public notice. The Carolina Village water system also received NOVs for failing to monitor disinfection by products, asbestos, nitrate, lead and copper, and dalapon, as well as failing to submit a consumer confidence report.

Site Visit

The Public Staff made a site visit on February 21, 2024, to observe the condition of the Carolina Village water and wastewater systems. The Public Staff indicates that the site visit was performed in conjunction with a compliance inspection performed by NC DEQ's Washington Regional Office, Water Resources Water Quality Regional

Operations personnel (together with the Public Staff, the Inspection Team). The Public Staff states that the Backup Operator in Responsible Charge (Backup ORC) and their support personnel met the Inspection Team at the Carolina Village WWTP to provide access, operate equipment, and answer questions.

According to the Public Staff, the site inspection revealed that the Carolina Village WWTP is in a significantly neglected condition. The Public Staff states that currently there is no functional means of wastewater disposal at the facility and neither blower was in operation at the time of the site visit. In addition, sludge and solids accumulation were noted in all WWTP tanks with the clarifier full of solids and chlorine tablets were not present for disinfection. The Public Staff also indicates that the tertiary filters did not appear to have been operated in the recent past based on dryness and crusting. Furthermore, the standby generator was not operable resulting in no electric power being available to the WWTP in case of a power outage. The Inspection Team also inspected the sewer lift stations and noted that the lift station controls and pumps have been an issue for over a year and continue to be in a state of disrepair.

The Public Staff also notes several issues with the Carolina Village water system. The Public Staff states that orthophosphate, a chemical used for lead and copper corrosion control and as a sequestration agent, was not being fed because a chemical pump outlet was burnt out. The Public Staff states that the orthophosphate vat level was low, and debris was observed inside. In addition, the Public Staff indicates that the water system should have two functional pumps with each pump operated by a separate motor that is electrically wired to an enclosed electrical panel. Contrary to this, the system had a single pump wired from an exposed electric panel. Finally, the Public Staff asserts that the ground storage tank has peeling paint and considerable exterior corrosion, and it is reasonable to be concerned about the state of the interior tank and whether it is affecting water quality.

Civil Penalty Assessment

The Public Staff contends that Currituck violated N.C.G.S. § 62-110(a) by operating a public utility without Commission approval. The Public Staff further asserts that Currituck violated Commission Rule R10-7 by failing to comply with NC DEQ's rules in the operation and maintenance of its sewer facilities and in the collection, treatment, and discharge of the sewage being treated. The Public Staff states that Currituck could be assessed a civil penalty of \$951,000 for acting as a public utility without Commission approval and not complying with sewer related environmental regulations since at least May 15, 2023. The Public Staff asserts that in the alternative, Currituck should be allowed to post a bond in the amount of \$500,000 subject to forfeiture.

Emergency Status

The Public Staff contends the Carolina Village wastewater system is not providing adequate service and, as such, Carolina Village has suffered an actual loss of adequate sewer service. The Public Staff further asserts the operating conditions of the Carolina

Village water system are precarious and that Carolina Village is at risk of losing adequate water service if the one wired pump motor fails or if corrosion of the water tank results in a major leak. In addition, the Public Staff contends that the water quality is unknown to some degree due to monitoring violations that have not been resolved and returned to compliance. According to the Public Staff, the appointment of an emergency operator is essential to re-establishing adequate wastewater service and reducing the imminent risk of losing adequate water service for the residents of Carolina Village.

CURRITUCK’S MOTION FOR AN ORDER ESTABLISHING TIME TO RESPOND

On April 5, 2024, Currituck filed a Motion for an Order Establishing Time to Respond (Motion) requesting 30 days, to and including April 25, 2024, to respond to the Public Staff’s Motion to Show Cause. In support of its Motion, Currituck states that it recently retained additional counsel to prepare a response to the Public Staff’s Motion to Show Cause and needs time for its new counsel to review the numerous allegations raised by the Public Staff. Currituck further states that the Public Staff’s Motion to Show Cause and request for an emergency operator goes beyond any relief that is responsive to Currituck’s CPCN Application and raises issues of novel and unanticipated nature. Currituck indicates that the requested timeframe to respond does not impact other deadlines in this docket and its Motion is not made for the purpose of delay.

DISCUSSION AND CONCLUSIONS

Based on the foregoing and the compelling need to protect the public interest, the Chair finds good cause to grant the Public Staff’s Motion to Show Cause and schedule a show cause hearing in this matter. In order to make the show cause hearing more efficient, the Chair further finds good cause to grant Currituck’s Motion and allow its counsel time to file a written response to the Public Staff’s Motion to Show Cause for review by the Public Staff and the Commission prior to the commencement of the hearing.

IT IS, THEREFORE, ORDERED as follows:

1. That Currituck shall file with the Commission a written response to the Public Staff’s Motion to Show Cause on or before Thursday, April 25, 2024;
2. That Currituck is hereby required to appear and show cause before the Commission on Monday, May 6, 2024, at 1:00 p.m. in Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, 27699, why the Commission should not issue a further order:
 - (a) declaring Currituck a public utility;
 - (b) assessing civil penalties against Currituck for violation of applicable statutes and Commission rules;

- (c) declaring the existence of an emergency warranting appointment of an emergency operator for the water and wastewater utility systems serving the Carolina Village subdivision; and
- (d) appointing an emergency operator for the water and wastewater utility systems serving the Carolina Village subdivision. Currituck may also respond to any other issues raised by the Public Staff in the Motion to Show Cause;

3. That the Public Staff shall participate in the hearing on behalf of the using and consuming public and prosecute this show cause proceeding;

4. That the Public Staff is requested to further investigate this matter, including seeking a certified person to be appointed emergency operator to oversee the operation of the water and wastewater utility systems, if it becomes necessary, and to assist customers for the purpose of this show cause proceeding;

5. That pending the hearing and determination of this show cause proceeding by the Commission, Currituck shall take all reasonable and necessary steps to provide adequate, safe, and reliable utility service to customers in the Carolina Village subdivision in Currituck County, North Carolina; and

6. That the Chief Clerk shall serve a copy of this Order on Currituck by means of United States certified mail, return receipt requested.

ISSUED BY ORDER OF THE COMMISSION.

This the 9th day of April, 2024.

NORTH CAROLINA UTILITIES COMMISSION



Tamika D. Conyers, Deputy Clerk