

STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

DOCKET NO. W-1300, SUB 60

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application by Old North State Water	)	
Company, Inc., 3212 6 <sup>th</sup> Avenue South,	)	MOTION OF THE PUBLIC
Suite 200, Birmingham, Alabama 35222,	)	STAFF TO COMPEL
for Authority to Adjust and Increase Rates	)	
for Water Utility Service in All Its Service	)	
Areas in North Carolina	)	

NOW COMES THE PUBLIC STAFF – North Carolina Utilities Commission (Public Staff), by and through its Executive Director, Christopher J. Ayers, and moves the Commission to compel Old North State Water Company, Inc. (ONSWC or Company), to fully respond to Public Staff Data Request 73. In support of this motion, the Public Staff respectfully shows the Commission the following:

1. On June 13, 2022, the Commission issued its Order Approving Settlement Agreement and Stipulation, Granting Partial Rate Increase, and Requiring Customer Notice (Order) in this docket.
2. Ordering paragraph 12 of the Order directs the Public Staff to, among other things, “thoroughly review the various sources of funding utilized by ONSWC for its capital and operational needs” and “work [with ONSWC] to create a plan to improve the capitalization of the Company[.]”

3. On July 13, 2022, the Public Staff sent ONSWC its Data Request No. 73 (PS DR 73) attached as Exhibit A.<sup>1</sup> Item 12 of PS DR 73 seeks Statements of Net Worth for John McDonald.

4. On July 22, 2022, ONSWC filed an objection to Item 12 (Objection). ONSWC contends the Public Staff's request is improper for the following reasons:

- a. Mr. McDonald's personal finances should have been addressed during the rate case if they were deemed relevant to the financial integrity of ONSWC;
- b. Mr. McDonald's personal finances are not relevant or required to comply with ordering paragraph 12 because of the scope of the Commission's directive in ordering paragraph 12;
- c. Mr. McDonald's personal finances are not relevant to the commitment made in the Settlement Agreement and Stipulation (Settlement) between ONSWC and the Public Staff;
- d. The late-filed exhibits "provide comprehensive information about the sources of funding for ONSWC;" and
- e. The Public Staff requested similar information in Docket No. W-1300, Sub 78, and later withdrew the request.

5. In his settlement testimony, Mr. McDonald testified that "I have the authority to commit Integra to continuing to finance the capital needs of ONSWC, and I do make that commitment. As a practical matter, ONSWC is on sound footing

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<sup>1</sup> The data request was misnumbered as Public Staff DR No. 71 when it was originally sent. It should have been identified as Public Staff DR No. 73. Exhibit A shows the correct number.

for its financial needs.” Tr. Vol. 2, 76-77. The information requested in PS DR 73 is essential to the Public Staff’s ability to comply with ordering paragraph 12 of the Order because it provides relevant and necessary information about the ability of ONSWC’s sole source of equity capital to follow through on this commitment, albeit through an intermediary, to provide the financial resources necessary for ONSWC to serve its North Carolina customer base.

Ownership of Old North State Water Company, Inc.

6. Mr. McDonald’s personal financial information is germane to this case because of his role as both the sole owner of ONSWC and its financial backer, Integra Water, LLC (Integra). As the sole owner of both entities, Mr. McDonald is the only person regulators, creditors, and other stakeholders could look to if either entity requires non-debt capital. One or both entities’ ability to continue as a going concern is threatened if he is unable to provide non-debt capital should a dire emergency arise. The commitment that Integra will support ONSWC is meaningless if Integra is unable to support itself.

7. While arguing that Mr. McDonald’s personal financial information is not relevant, ONSWC asserts that, if the Public Staff maintains that his personal information is relevant, then it should have been raised and explored during the financial viability assessment completed during the rate case. This assertion completely glosses over the fact that the ultimate owner of ONSWC was not clearly and publicly confirmed until March 16, 2022, (8 days after the evidentiary hearing and 19 days after the close of discovery on ONSWC’s rebuttal testimony) when

ONSWC made filings in 28 sub-dockets to correct misstatements regarding who owned the 95% interest in ONSWC that was not owned by Michael Myers. There are numerous instances in filings with the Commission and emails and data request responses to the Public Staff where Integra was referenced as the owner, parent, or a similar arrangement of ONSWC.

8. The Public Staff's approach to the rate case was based on the representation that Integra was the majority owner ONSWC and it is impossible to know what the Public Staff's approach would have been had it known that Integra had no ownership interest in ONSWC. Much of ONSWC's argument in opposition to PS DR 73 is based upon the Settlement Agreement and Stipulation (Settlement) between the Public Staff and the Company and testimony provided by Public Staff witness John R. Hinton. The picture their argument paints is incomplete. In fact, the Public Staff only learned that Integra did not own ONSWC via email sent on Sunday, March 6, 2022 at 2:01 PM, after the conclusion of settlement negotiations, after a settlement in principle was reached, while the Public Staff and ONSWC were trying to hammer out the language of the Settlement. The email directed to the Public Staff providing this "correction" was sent less than 48 hours prior to the start of the evidentiary hearing on March 8, 2022, at 1:00 PM. The ramifications of that significant change were not fully understood as evidenced by the following excerpt from Public Staff witness Hinton's testimony during the evidentiary hearing in response to cross examination by ONSWC's counsel:

Q. Mr. Hinton, were the confidential financial statements provided to you just for Integra or were they for the consolidated Integra and Old North State?

A. Well --

Q. If you're not sure, that's okay, but I just --

A. I'm not sure, because the -- of the ownership issue. I -- I'm thinking they're the consolidated total of both companies. But to be honest with you, I can't really testify to that because That wasn't done through the data request, that was done through the courtesy filing.

Tr. Vol. 2, 337.

9. ONSWC's basis for the Objection relies heavily on the Public Staff's assessment of Integra's and ONSWC's financial viability articulated in the Settlement and Public Staff witness Hinton's pre-filed Settlement Testimony and evidentiary hearing testimony. ONSWC is elevating a statement about a fluid situation, made at a particular time, based on particular information to a final proclamation. As discussed herein, the Public Staff learned information crucial to that assessment at the last minute and, in good faith, moved forward with the Settlement instead of calling it to a halt and asking the Commission to further delay the proceeding.

#### Financial Data Previously Provided

10. As mentioned above, Mr. McDonald's personal financial information is necessary because it speaks to his financial ability to support one entity that he has committed to support another. The power to direct an entity to fund another is meaningless if the funding entity lacks the capital required and can only secure that capital by taking on additional debt itself. More debt, arguably, jeopardizes the

whole and, given the public interest involved, Mr. McDonald should be required to demonstrate that he can step into the shoes of Integra if necessary.

11. As discussed more fully-below, the financial data used during the rate case is dated and stale:

- a. The most recent financial statements provided for ONSWC during the rate case were dated December 31, 2020.
- b. The most recent capital structure information was provided in response to a data request the Public Staff served on ONSWC in this docket on or about September 20, 2021 (see attached response to Public Staff Data Request No. 40). The Public Staff's pre-filed direct and supplemental testimonies were, therefore, based on ratios from August 2021.
- c. The Integra financial statements provided as late-filed exhibits are dated September 30, 2021.

ONSWC provided financial statements in two contiguous extension dockets initiated after the rate case: financial statements for ONSWC dated June 30, 2021, were provided in Docket No. W-1300, Sub 78, and financial statements for ONSWC dated March 31, 2022, were provided in Docket No. W-1300, Sub 72. All of the financial statements referenced above and ONSWC's response to Public Staff Data Request No. 40 are included in CONFIDENTIAL Exhibit B. The information noted with an asterisk in Exhibit B was provided after the evidentiary hearing in this docket on March 8, 2022.

12. The data sources in Exhibit B listed above show the following:

[BEGIN CONFIDENTIAL]

[REDACTED]

[END CONFIDENTIAL]

The data above clearly shows that ONSWC's financial state has changed since the Public Staff completed its assessment of ONSWC's financial viability in March 2022. Those changes merit additional analysis.

13. A review of Mr. McDonald's personal financial information to ensure that he has the means to step in, if necessary, is essential for the reasons

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<sup>2</sup> While this should be reassuring, ONSWC's current cash balance may be significantly different now given the highlighted statement in the attached email correspondence from ONSWC's counsel to Commission Staff included as Exhibit C.

discussed above. The information may be provided confidentially in accordance with N. C. Gen. Stat. § 132-1.2; indeed, the financial statements for Integra and ONSWC were marked as confidential. The ability to designate Mr. McDonald's personal financial information as confidential, to the extent it complies with N.C.G.S. § 132-1.2, should protect his privacy.

#### Ordering Paragraph 12

14. Ordering paragraph 12 is not limited in the way ONSWC suggests as evidenced by the inclusion of "including" in the following sentence:

the Public Staff shall thoroughly review the various sources of funding utilized by ONSWC for its capital and operational needs, the funds disbursed by ONSWC to Chatham North Holdings, Inc., and the relationships, operating agreements, and contracts between and among the Company, Integra, the Integra affiliates, and Chatham North Holdings, Inc.; including whether they are reasonable, appropriate, and in conformity with North Carolina law and Commission Rules, including but not limited to N.C.G.S. §§ 62-153, 62-160, and 62-167.

The Commission is signaling topics it would like to be "thoroughly reviewed" during the Public Staff's investigation and discussed in the Public Staff's report; the Commission is not, however, limiting the investigation it directed the Public Staff to undertake. To comply with the Commission's directives, the Public Staff must have a full understanding of the underlying facts regarding options available to fund and, eventually, recapitalize ONSWC.

#### Late-filed Exhibits and Related Access to Information

15. ONSWC's Objection also states that the Public Staff has ample access to information through the information it provided as late-filed exhibits. The



information provided is instructive, but is not, by any means, complete. The Public Staff would not have been instructed to “thoroughly review” certain things if the Commission were satisfied by what had already been provided.

#### Prior Data Request

16. ONSWC’s argument that PS DR 73 is improper because the Public Staff withdrew a similar data request in another docket has no merit. Withdrawing a data request in the face of a protest does not undermine the validity of the request; in this case, it simply meant that the Public Staff chose not to litigate the issue at that time.

17. Additionally, the Public Staff’s withdrawal of the data request in Docket No. W-1300, Sub 78 was conditioned upon receipt of ONSWC’s financial information in its 2021 Annual Report, which the Public Staff was told would be filed on April 30, 2022. The Annual Report was filed yesterday. Further, the Public Staff has not made a recommendation in the Sub 78 docket or formally responded to ONSWC’s Motion to Set Bond at \$10,000 filed in that docket on March 23, 2022, because additional information is still needed.

18. Additionally, requesting the same information in two dockets, particularly when the first request was withdrawn, is hardly “unwarranted” or “abusive.” These characterizations, and other similar statements could themselves be characterized as bring “unwarranted” or “abusive.” Finally, contrary to ONSWC’s assertion, the Public Staff has not sought any financial information regarding Mr. McDonald’s family.

WHEREFORE, for the reasons set forth above, the Public Staff moves:

1. That the Commission direct ONSWC to fully respond to the Public Staff's Data Request No. 73, within a reasonable time.
2. For such other and further relief as the Commission may deem just and proper.

This the 2nd day of August, 2022.

PUBLIC STAFF  
Christopher J. Ayers  
Executive Director

Lucy E. Edmondson  
Chief Counsel

Electronically submitted  
/s/ Reita D. Coxton  
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Old North State Water Company, LLC  
Docket No. W-1300, Sub 60  
Public Staff Data Request No. 73  
Date Requested: July 13, 2022  
Date Due: July 25, 2022

**Public Staff Technical Contacts:**      **Bob Hinton**  
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Please provide responses to this request in a searchable native electronic format (e.g., Excel, Word, or PDF files). If in Excel format, please include all working formulas. In addition, please include: (1) the name and title of the individual who has the responsibility for the subject matter addressed therein; and (2) the identity of the person making the response by name, occupation, and job title. Please also refer to Public Staff Data Request No. 1 for instructions for responding to this and all other Data Requests served on Old North State Water Company, LLC (ONSWC or the Company) by the Public Staff in the above-captioned proceeding.

**Topic: Capital Structure and Cost of Debt**

1. Please provide an update, on a monthly basis, to the Company's responses to Items 1 and 2 of Public Staff Data Request No. 40. The update period should extend through May 31, 2022. Please consider this an on-going request and provide the end-of-month data for future periods as soon as it is available.
2. Please provide a description of the legal filings and financial arrangements between ONSWC and Chatham North Holdings, Inc. (Chatham).

3. Please provide the repayment schedule for the loan to Chatham that, at a minimum, includes the following information:
  - a. Amount of each payment;
  - b. The principal and interest components of each payment; and
  - c. The due date of each payment.
4. Please provide the repayment schedule by loan, for each loan between ONSWC and Integra Water, LLC and its operating subsidiaries that, at a minimum, includes the following information:
  - a. Amount of each payment;
  - b. The principal and interest components of each payment; and
  - c. The due date of each payment.
5. Please discuss the way the Company treated the interest and principal payments for the loans referenced in Items 2 and 4 above for federal and state income tax purposes for all tax years since the first of those loans was disbursed.
6. Please discuss the way the Company treated the interest and principal payments for the loans referenced in Items 2 and 4 above for financial reporting purposes for all reporting periods since the first of those loans was disbursed.
7. Please answer the following questions regarding recapitalization of the Company's balance sheet:
  - a. How does the Company propose to accomplish the recapitalization discussed in Ordering Paragraph 12 of the Commission Order Approving Settlement Agreement and Stipulation, Granting Partial Rate Increase, and Requiring Customer Notice issued in this docket on June 13, 2022?
  - b. Discuss, in detail, the options for recapitalization the Company considered.
  - c. Discuss the pros and cons of those options for recapitalization.
  - d. Discuss why certain options were included in the proposal.
  - e. Discuss why certain options were excluded from the proposal.
  - f. Discuss any scenarios that the Company contends are not an option for recapitalization and outline the basis for that determination.
8. Please answer the following questions regarding the "removal of the 5% ownership share of Michael [Myers]" discussed in the Company's March 25, 2022 letter filed in the Company folder:
  - a. When was the removal completed?
  - b. How was the removal accomplished?
  - c. If the removal has not occurred, explain why and discuss future plans regarding Myer's removal.
  - d. How does, or will, the removal impact the Company's capitalization plans?
9. Please discuss the impact the Company's conversion from a limited liability company to a C Corporation has had, or will have, on the Company's capitalization plans.

10. Please provide a copy of the following financial statements for ONSWC:
- a. ONSWC's Income Statement for the twelve-month period ending on December 31, 2021;
  - b. ONSWC's Income Statement for the quarter ending on March 31, 2022;
  - c. ONSWC's Balance Sheet as of December 31, 2021;
  - d. ONSWC's Balance Sheet as of March 31, 2022;
  - e. ONSWC's Statement of Cash Flows for the twelve-month period ending on December 31, 2021; and
  - f. ONSWC's Statement of Cash Flows for the quarter ending on March 31, 2022.

Please consider this an on-going request and provide the end-of-quarter financial statements for future periods as soon as they are available.

11. Please provide a copy of the following consolidated and consolidating financial statements for Integra Water, LLC:
- a. Integra Water, LLC's Income Statement for the twelve-month period ending on December 31, 2021;
  - b. Integra Water, LLC's Income Statement for the quarter ending on March 31, 2022;
  - c. Integra Water, LLC's Balance Sheet as of December 31, 2021;
  - d. Integra Water, LLC's Balance Sheet as of March 31, 2022;
  - e. Integra Water, LLC's Statement of Cash Flows for the twelve-month period ending on December 31, 2021; and
  - f. Integra Water, LLC's Statement of Cash Flows for the quarter ending on March 31, 2022.

Please consider this an on-going request and provide the end-of-quarter financial statements for future periods as soon as they are available.

12. Please provide a Statement of Net Worth for John McDonald as of December 31, 2021 and March 31, 2022. Please consider this an on-going request and provide the end-of-quarter statements for future periods as soon as they are available.
13. Please identify banks and lending institutions that could be considered a source of external capital or funding to ONSWC.



CONFIDENTIAL  
Exhibit B





**From:** [Drooz, David T.](#)  
**To:** [Harrod, Jennifer T](#)  
**Cc:** [Holt, Gina](#); [Coxton, Reita D](#); [John McDonald \(JMcDonald@integrawater.com\)](mailto:John.McDonald@integrawater.com)  
**Subject:** [External] Old North State rate case order  
**Date:** Tuesday, May 31, 2022 4:20:41 PM

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**CAUTION:** External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to [Report Spam](#).

Jennifer,

Any idea when the Commission will issue its order in W-1300 Sub 60?

According to John McDonald, Old North State Water Company is about to go cash negative, and really needs to get an increase into its rates.

Thanks  
David

**David Drooz**

Counsel

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**CERTIFICATE OF SERVICE**

I certify that I have served a copy of the foregoing Motion on all parties of record in accordance with Commission Rule R1-39, by United States mail, postage prepaid, first class; by hand delivery; or by means of facsimile or electronic delivery upon agreement of the receiving party.

This the 2nd day of August, 2022.

Electronically submitted  
/s/ Reita D. Coxton