

**BEFORE THE**  
**NORTH CAROLINA UTILITIES COMMISSION**

**WLI INVESTMENTS, LLC**

**DOCKET NO. W-1305, SUB 35**

**DOCKET NO. W-1300, SUB 77**

**DIRECT TESTIMONY AND EXHIBITS OF**

**D. LOGAN**

**SEPTEMBER 30, 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. 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: DURING YOUR TIME IN THE REAL ESTATE BUSINESS, HAVE YOU INTERACTED WITH REGULATED PUBLIC UTILITIES.

A: Yes. The development of real estate for single-family home subdivisions requires interacting with regulated public utilities on a regular basis, because without access to water supply and wastewater treatment capacity we cannot obtain permits to construct single-family homes or complete construction and sale of the homes in our subdivisions. Often, we find ourselves with only one option for obtaining these necessary utility services.

Q: PLEASE EXPLAIN IN MORE DETAIL YOUR TYPICAL EXPERIENCE IN DEALINGS WITH REGULATED PUBLIC UTILITIES.

A: When our company identifies land that offers an attractive opportunity for development, securing utility services (both water and wastewater) for the subdivision is a critical part of the early stage of real estate development. Because this dispute is focused on wastewater service, my testimony focuses on that topic rather than water service. When a suitable utility service provider is identified, we typically negotiate and execute a development agreement that requires our

1 company to construct a wastewater collection system within the subdivision to certain design  
2 specifications to meet permitting requirements or satisfy the service provider's design  
3 requirements. A development agreement will also require that the wastewater collection system be  
4 dedicated over to the utility to be owned and operated by the utility as a part of its wastewater  
5 facilities. In exchange, the utility promises to reserve sufficient wastewater treatment capacity,  
6 receive wastewater from the subdivision, and to provide wastewater treatment services as a part of  
7 the utility's regular business operations. The nature of the development agreement as an  
8 enforceable contract is critical to our company's ability to do business because we must plan over  
9 multi-year time horizons to procure materials, hire labor, market properties, obtain permits, and  
10 complete sales of new homes.

11 Q: FOCUSING SPECIFICALLY ON THE CURRENT DISPUTE, PLEASE PROVIDE A  
12 HIGH-LEVEL INTRODUCTION TO THE PLANS FOR DEVELOPING SALTERS HAVEN  
13 AND THE ADJACENT LEA LOTS.

14 A: Salters Haven at Lea Marina is planned to be a single-family home subdivision located off  
15 of Factory Road in Pender County, North Carolina. Salters Haven at Lea Marina itself is planned  
16 to be 308 single family homes, and adjacent to Salters Haven at Lea Marina is a parcel owned by  
17 Bert Lea that we call the "Lea Lots." As part of the development of Salters Haven at Lea Marina,  
18 I agreed to construct the force main and wastewater collection system for the Lea Lots so that Mr.  
19 Lea could develop the Lea Lots when he is prepared to do so. To be clear, the Lea Lots are not  
20 within the Salters Haven at Lea Marina subdivision, as the Lea Lots would not be covered by the  
21 restrictive covenants and the lot owners would not be members of the property owner's association.  
22 However, I have made two contracts related to the Lea Lots: one with Mr. Lea where I promised  
23 to build the force main and wastewater collection system so that the Lea Lots will be ready for

1 development, and the second with Old North State Water Company (ONSWC) where I promised  
2 to construct the wastewater collection systems and other facilities in Salters Haven at Lea Marina  
3 and in the Lea Lots.

4 The contract with ONSWC, which I refer to as the Development Agreement, is the same  
5 contract that was filed as Exhibit A to WLI Investments' complaint in this proceeding. As reflected  
6 in the Development Agreement, Salters Haven at Lea Marina, "the Subdivision," as defined in the  
7 contract, was planned to be constructed in phases, which is typical in the development of  
8 single-family home subdivisions. The Development Agreement definition of "Subdivision"  
9 includes 338 homes, representing both Salters Haven at Lea Marina and the Lea Lots at full build  
10 out. The Development Agreement refers to the Lea Lots as the "Extended Service Area," because  
11 it was understood that the Lea Lots would not be within the Salters Haven at Lea Marina  
12 subdivision. The Development Agreement allows phasing of development, which is an important  
13 part of my company's ability to plan, finance, and complete development work, because it allows  
14 us to monitor developments in the market and adjust our plans for construction and development  
15 to meet the demands of the market. There has been some confusion in the filings in this proceeding  
16 about whether the Lea Lots are inside or outside the Salters Haven subdivision. I want to clarify  
17 for the Commission that under the Development Agreement the "Subdivision" is to consist of 338  
18 homes, although 30 of those homes, the "Lea Lots," would be developed at a later time and, as I  
19 mentioned earlier would not be within the restrictive covenants for Salters Haven at Lea Marina.  
20 Because of this phasing and Mr. Lea's desire to develop the Lea Lots at a later time, we have  
21 sometimes informally referred to "the subdivision" as the 308-home development, but as defined  
22 in the Development Agreement "Subdivision" means the entirety of the 338-home development.

1 However, it should be clear that ONSWC promised to reserve sufficient wastewater treatment  
2 capacity to serve the entire "Subdivision," as defined in the Development Agreement.

3 Q: HAVE THE ACTIONS OF THE RESPONDENTS IN THIS CASE FRUSTRATED  
4 YOUR COMPANY'S EFFORTS TO COMPLETE THE BUILD-OUT OF SALTERS HAVEN  
5 AT LEA MARINA AND THE WORK TO MAKE THE LEA LOTS READY FOR  
6 DEVELOPMENT?

7 A: Yes. When ONSWC decided to sell its utility assets to Pluris and to not expand the Majestic  
8 Oaks WWTP as it promised to do in the Development Agreement, it caused uncertainty for our  
9 company's plans to complete development of the Salters Haven at Lea Marina subdivision and the  
10 Lea Lots as planned in several ways. First, we are uncertain which utility to look to for performance  
11 of the promises in the Development Agreement. ONSWC tells us to look to Pluris as the potential  
12 future owner of the system and Pluris tells us to look to ONSWC as the counter-party to the  
13 Development Agreement. Second, when Pluris became the potential buyer, it asserted its position  
14 that grinder pumps and low-pressure facilities were not permitted under the terms of the  
15 Development Agreement. However, as I discuss later in my testimony, it was understood both by  
16 ONSWC and my company at the time the Development Agreement contract was signed that  
17 grinder pumps and low-pressure facilities would be installed where necessary on some lots in  
18 Salters Haven at Lea Marina (approximately 308 homes total) and in the Lea Lots (approximately  
19 30 homes total). Third, while I can understand that the Respondents' changed plans might be a  
20 better plan for making wastewater service available in the Pender County area, I believe that the  
21 ONSWC is obligated to fulfill the promises made in the Development Agreement or to obtain as  
22 substitute performance an enforceable agreement with Pluris to do so as the future owner of the  
23 system. Pluris is apparently unwilling to do so and the result is a chilling effect on our development

activities in Salters Haven at Lea Marina, because we cannot obtain necessary permits without the utilities' cooperation.

Q: YOU BELIEVE THAT THIS IS UNREASONABLE AND UNLAWFUL CONDUCT ON THE PART OF THE RESPONDENTS?

A: Yes, I do. Although I am not a lawyer, I am experienced in dealing with regulated and unregulated utilities and this informs my views about the standards of conduct for regulated public utilities. In the first place, it is unreasonable for public utilities to breach their contract agreements. Secondly, it is unreasonable for Pluris to interfere in the performance of the contract by ONSWC. In addition, I believe that the Commission has a role in supervising public utilities to ensure that they are not breaching contracts and causing harm to others that rely upon public utilities for adequate service that cannot be obtained from another source. In my view, this dispute is an example of why this Commission exists with the authority to oversee public utilities, because without the oversight of the Commission, public utilities would be free to use their unequal bargaining power to exact unreasonable conditions and requirements from others that they do business with.

## II. TESTIMONY IN SUPPORT OF COUNT ONE OF THE COMPLAINT.

Q: WITH RESPECT TO YOUR DEALINGS WITH ONSWC IN THE DEVELOPMENT OF SALTERS HAVEN SUBDIVISION AND THE ADJACENT "LEA LOTS", DID YOU FOLLOW THE TYPICAL APPROACH THAT YOU DESCRIBED EARLIER?

A: Yes. In late 2017-early 2018, we identified the parcel now known as "Salters Haven" as able to support the successful development of approximately 308 single family homes. In the early stages, we spoke with Mr. Lea, the owner of the adjacent parcel commonly referred to as the "Lea Lots" who was interested in making the Lea Lots ready for the development of an additional

1 30 single family homes. Having identified these parcels for development, we sought to secure  
2 wastewater treatment service for the subdivision and began negotiations with ONSWC with the  
3 goal of entering into a development agreement. We reached agreement with ONSWC on the terms  
4 of a development agreement and executed the "Agreement" on December 13, 2018 ("Development  
5 Agreement"). A true and accurate copy of the Development Agreement is attached hereto as WLI  
6 Investments Direct Exhibit No. 1.

7 After executing the Development Agreement with ONSWC, we engaged Paramounte  
8 Engineering, Inc. ("Paramounte Engineering"), to assist us with the design and permitting of the  
9 wastewater collection system. Paramounte Engineering conducted the usual and customary  
10 analysis for the design of a sanitary sewer system for Salters Haven at Lea Marina and for the Lea  
11 Lots, and prepared the two Sanitary Sewer Design Narrative documents required to obtain permits  
12 and fulfill our obligations under the Development Agreement. A true and accurate copy of the  
13 Paramounte Engineering's Sanitary Sewer Design Narrative for the Lea Lots is attached hereto as  
14 WLI Investments Direct Exhibit No. 2, and a true and accurate copy of Paramount Engineering's  
15 Sanitary Sewer Design Narrative for Salters Haven at Lea Marina is attached hereto as WLI  
16 Investments Direct Exhibit No. 6.

17 Q: ARE THERE KEY PROVISIONS OF THE DEVELOPMENT AGREEMENT AND  
18 PARAMOUNT ENGINEERING'S SANITARY SEWER DESIGN NARRATIVE  
19 DOCUMENTS THAT YOU WISH TO HIGHLIGHT FOR THE COMMISSION?

20 A: Yes, there are. I would highlight for the Commission the following key provisions in the  
21 Development Agreement that reflect the most important agreements and understandings between  
22 the WLI Investments and ONSWC:

1) Salters Haven and the Lea Lots were always intended to be developed separately in terms of the construction of homes. However, the provisions of the Development Agreement reflect that the total build out of the "Subdivision," as defined in the Development Agreement, would be 338 single-family homes, or what the development agreement terms "REUs" or "residential equivalent units." That is reflected in the recitals, or "whereas" clauses, on the first page of the Development Agreement, and throughout the other sections of the Development Agreement that required our company to construct a wastewater collection system suitable for handling the expected flow from the REUs at full build out. More specifically, the Development Agreement defines "Subdivision" to mean "a residential subdivision comprised of approximately 338 single family residences known as the Salters Haven at Lea Marina." The Sanitary Sewer Design Narrative for Salters Haven at Lea Marina (Exhibit No. 6) is consistent with this approach, as can be seen on pages 3 and 4, where Paramounte Engineering details the "projected wastewater/water demands" from the developed lots and the planned community amenities such as the clubhouse, pool area, and marina area. Specifically, on page 4, Paramounte Engineering calculated the number of "Single Family Lots" at 310 lots in "Lea Marina Residential" and 30 lots in "Future (Lea Properties)," which is essentially the same as the Development Agreement's stated total REUs of 338.

2) Aside from ONSWC's agreement to accept the wastewater collection systems, Section 7 of the Development Agreement requires ONSWC to expand the Majestic Oaks Wastewater Treatment Plant ("Majestic Oaks WWTP"). This promise was a critical part of the deal between our company and ONSWC, because there is a lack of sufficient wastewater treatment capacity in this part of Pender County. Without the expanded treatment capacity,



1 we would not be able to complete the build out of Salters Haven at Lea Marina or complete  
2 work that would make the Lea Lots ready for construction of homes. I expected ONSWC  
3 to perform on this obligation and even supported their efforts to do so. For example, I went  
4 to the Pender County Board of Commissioners meeting to express support for the renewal  
5 and expansion of the Special Use Permit for the Majestic Oaks WWTP.

- 6 3) It was always a part of the parties' understanding that grinder pumps and low-pressure  
7 facilities would need to be installed as a part of the wastewater collection system in Salters  
8 Haven and the adjacent Lea Lots. This is reflected in Section 1 of the Development  
9 Agreement, that sets out definitions of "Grinder Pump Station," "Grinder Pump Valve  
10 Box," and "Wastewater Service Line." The Sanitary Sewer Design Narrative for the Lea  
11 Lots is consistent with this approach, stating as a part of the "Project Narrative" on page 2  
12 that the "flow [from the subdivision] will be collected via both low-pressure force main  
13 and a gravity sewer system." A low-pressure force main is only necessary in wastewater  
14 collection systems that have grinder pumps. I also note that the Development Agreement  
15 defines "On-site Wastewater Collection System" to mean "the Wastewater Service Lines  
16 (defined below), pressure sewer lines, gravity sewer lines, force mains, lift stations, sewer  
17 clean outs, and all appurtenant equipment that will deliver wastewater produced by the  
18 houses within the Subdivision. Wastewater Collection System shall not include that portion  
19 of sewer line extending from the house to the sewer cleanout." The inclusion of the terms  
20 "pressure sewer lines" and "all appurtenant equipment" in that definition are also clear  
21 indications that the parties to the Development Agreement knew and agreed that grinder  
22 pumps and low-pressure sewer lines would be components of the wastewater collection  
23 systems in the Subdivision. Again, "Subdivision" is defined in the recitals on page 1 of the

1 Development Agreement to include the entirety of Salters Haven at Lea Marina  
2 (approximately 308 lots) and the adjacent Lea Lots (approximately 30 lots).

3 Q: CAN YOU EXPLAIN WHY SECTION 4 OF THE DEVELOPMENT AGREEMENT,  
4 TITLED “DESIGN, PERMITTING, AND INSTALLATION OF ON-SITE WASTEWATER  
5 COLLECTION SYSTEM” DOES NOT INCLUDE THE TERMS “GRINDER PUMPS” OR  
6 “LOW-PRESSURE FACILITIES”?

7 A: No, I cannot completely explain why Section 4 does not include these terms. However,  
8 reviewing in detail the defined terms used in Section 4 and applying the normal meanings of the  
9 other language used, there are several reasons why it is clear that the Development Agreement  
10 contemplated the installation of grinder pumps and low-pressure facilities as part of the “On-Site  
11 Wastewater Collection System.” First, Section 4 uses the defined term “Subdivision,” which again  
12 is defined in the first “whereas” clause of the Development Agreement to mean 338 single-family  
13 residences. Second, the requirement of Section 4 to obtain the Utility’s approval of the On-Site  
14 Wastewater Collection System Plans and the Utility’s right to make periodic inspections of the  
15 installation provide opportunities for the Utility to object to the design components of the  
16 wastewater collection system. Third, Section 4.2 uses the defined term “On-Site Wastewater  
17 Collection System,” which is defined at Section 1.28 and expressly includes “pressure sewer  
18 lines.” Finally, Section 4.2 “Installation Requirements” provides that our company would pay for  
19 the “installation costs of all necessary components of the On-Site Wastewater Collection System  
20 to provide wastewater utility service to all lots in the Subdivision.” At the time the contract was  
21 signed and today, my understanding and my agreement with ONSWC was that grinder pumps and  
22 low-pressure facilities were included in the phrase “all necessary components” because grinder

1 pumps and low-pressure facilities were anticipated to be needed due to the topography of the  
2 parcels being developed.

3 Q: DOES SECTION 5 OF THE DEVELOPMENT AGREEMENT USE NEARLY  
4 IDENTICAL LANGUAGE AS SECTION 4 OF THE DEVELOPMENT AGREEMENT?

5 A: Yes, it does. Like Section 4, Section 5 does not contain the phrases “grinder pumps” or  
6 “low-pressure facilities.” However, Section 5 uses the same phrasing “all necessary components,”  
7 which includes the use of grinder pumps and low-pressure facilities, as I previously stated with  
8 respect to Section 4. There is no definition of “ESA Wastewater Collection System” included in  
9 Section 1 or anywhere else in the Development Agreement. The important difference between  
10 Section 4 and Section 5 is the amount of wastewater treatment capacity that the utility agreed to  
11 reserve to serve the “Subdivision,” as defined in the Development Agreement: Section 4 reserves  
12 64,680 GPD for the expected 308 residences and 3,204 GPD for the expected clubhouse, marina,  
13 and community amenity buildings, while Section 5 reserves 6,300 GPD for the expected 30  
14 residences.

15 Q: CAN YOU EXPLAIN WHY THERE IS NO DEFINITION OF “ESA WASTEWATER  
16 COLLECTION SYSTEM” IN THE DEVELOPMENT AGREEMENT?

17 A: No, I cannot. The Development Agreement was drafted by ONSWC.

18 Q: WITHOUT A DEFINITION OF “ESA WASTEWATER COLLECTION SYSTEM” IN  
19 THE DEVELOPMENT AGREEMENT, HOW DO YOU THINK THAT THIS PHRASE  
20 SHOULD BE UNDERSTOOD?

21 A: Without a definition of “ESA Wastewater Collection System” being included in the  
22 Development Agreement, the Commission will need to make reference to the structure of the  
23 agreement, including the other defined terms, and interpret the provisions of the Development

Agreement in a way that is consistent with the intent of the parties at the time the Development Agreement was signed. The most reasonable interpretation of the phrase “ESA Wastewater Collection System” is to define that phrase as having the same meaning as “On-Site Wastewater Collection System” except as to the location of where the two systems are to be installed. In other words, the appropriate interpretation of the Development Agreement is that the components of the On-Site and ESA Wastewater Collection Systems are the same, but the place where those components are to be installed are different with the On-Site Wastewater Collection System being in the 308-home Salters Haven at Lea Marina and the ESA Wastewater Collection System being in the 30-home Lea Lots.

Q: WOULD THAT INTERPRETATION BE CONSISTENT WITH THE PARTIES’ INTENTIONS AT THE TIME THE DEVELOPMENT AGREEMENT WAS SIGNED?

A: Yes, that is what ONSWC and WLI Investments agreed to.

Q: MORE SPECIFICALLY, YOUR TESTIMONY IS THAT THE PARTIES KNEW AND UNDERSTOOD THAT GRINDER PUMPS AND LOW-PRESSURE FACILITIES WOULD NEED TO BE INSTALLED IN SALTERS HAVEN AT LEA MARINA AND IN THE LEA LOTS AS PARTS OF THE WASTEWATER COLLECTION SYSTEMS?

A: Yes, that is correct. I believe that the Development Agreement reflects that understanding with the definition of “Subdivision,” the definition of “On-Site Wastewater Collection System,” and the use of the phrase “necessary components” in both Section 4 and Section 5 of the Development Agreement.

Q: AFTER THE DEVELOPMENT AGREEMENT WAS SIGNED DID OSNWC OBJECT TO ANY OF THE PLANS, PERMIT APPLICATIONS, OR CONSTRUCTION PROGRESS ON THE BASIS THAT GRINDER PUMPS AND LOW-PRESSURE FACILITIES WERE

1 PLANNED TO BE INSTALLED IN THE ON-SITE WASTEWATER COLLECTION  
2 SYSTEM?

3 A: No. In fact, there are 26 lots in Salters Haven that have grinder pumps and low-pressure  
4 facilities present today. I would note here that the Complaint WLI Investments filed in this docket  
5 states that 30 lots in Salters Haven would use grinder pumps; however, in preparation of my  
6 testimony I realized that there are only 26 lots in Salters Haven today that have grinder pumps  
7 installed. So, I would like to correct and update that number for the Commission.

8 ONSWC expressed no concerns or objections about this system design configuration, and  
9 in fact reviewed and approved the design plans that were submitted to the Department of  
10 Environmental Quality for review and approval, and, ultimately, ONSWC accepted the deeded  
11 dedication of the existing phases of the wastewater collection system, including grinder pumps  
12 and low-pressure facilities. In addition, ONSWC's personnel specifically discussed with personnel  
13 from my company the use of grinder pumps and low-pressure facilities and offered this as a  
14 solution to the challenges we encountered in designing a gravity-fed wastewater collection system.  
15 This communication was attached to our complaint and is attached hereto as WLI Investments  
16 Direct Exhibit 3. Specifically, in pages 6-9 of Exhibit 3, Mr. Myers described an "Alternative B –  
17 Low Pressure Sewer (requires hydraulic modelling) 1. 5,250' of 4" forcemain [sic] to WWTP 2.  
18 Individual grinder pumps at each home (installed by builder) with connection to forcemain [sic] in  
19 street" and stated on behalf of ONSWC as follows: "We like Alternative A but are open to  
20 Alternative B if that provides any advantages to you." We relied on this statement from ONSWC  
21 and designed the wastewater collection to overcome the challenges we were experiencing in  
22 designing a properly functioning wastewater collection system.

1 Q: WHAT WERE THOSE CHALLENGES?

2 A: In short, the topography of the parcel required siting some homes in a low-lying area and  
3 the excavation required to properly design and construct a gravity-fed system became cost  
4 prohibitive and practically difficult. Grinder pumps and low-pressure facilities are the wastewater  
5 collection system components that are used to overcome these challenges, essentially, making it  
6 easier to move wastewater uphill for delivery to the utility. I will discuss in more detail the design  
7 challenges and the advice I received from our project engineer later in my testimony.

8 Q: WHEN DID THE ISSUE ABOUT THE INSTALLATION OF GRINDER PUMPS AND  
9 LOW-PRESSURE FACILITIES ARISE?

10 A: I cannot pinpoint exactly when this occurred, but sometime in the middle or later part of  
11 2020, I learned that Pluris would purchase ONSWC's wastewater utility assets and utility  
12 franchise. At this point, ONSWC stopped cooperating with us in reviewing plans and applying for  
13 permits. Troubled by this change in behavior, I contacted ONSWC's President John McDonald  
14 who told me that ONSWC would not accept a wastewater collection system for the Lea Lots that  
15 includes grinder pumps and low-pressure facilities because Pluris has a preference or policy  
16 against the use of these facilities. Mr. McDonald also informed me that he would not sign any  
17 permit applications until Pluris removed its objection or agreed to accept these facilities as a part  
18 of the wastewater collection systems.

19 Q: HAS ONSWC ADMITTED THAT MR. MCDONALD SAID THIS TO YOU?

20 A: Yes, in responding to WLI Investments' complaint, ONSWC admitted the allegations of  
21 Paragraph 26 of the Complaint. Paragraph 26 of the Complaint reads as follows: "When WLI  
22 Investments was successful in contacting ONSWC, ONSWC's President John McDonald  
23 informed WLI Investments that he would not sign a permit application to be submitted to NC DEQ

1 on behalf of ONSWC because Pluris refuses to accept WLI Investments' wastewater collection  
2 system that included grinder pumps and low-pressure facilities." In its response to the Complaint,  
3 Respondents stated, "The allegations stated in paragraph 26 are admitted." In addition, our project  
4 engineer exchanged email communications with Mr. McDonald of ONSWC related to this issue  
5 and Mr. McDonald deferred to Pluris on whether the wastewater collection system would be  
6 accepted. Mr. McDonald's response is included in WLI Investments Direct Exhibit No. 4, at  
7 page 8, where he explains that he is in "an awkward spot" because Pluris, as the purchaser of the  
8 system was "adamant" that low-pressure facilities would not be accepted. We understand the  
9 "awkward spot" described by Mr. McDonald to be that Pluris was forcing him to breach his  
10 contract with WLI Investments, with the implied or express threat that Pluris would back out of  
11 the purchase if ONSWC allowed the permit application for a wastewater collection system that  
12 includes low-pressure facilities.

13 Q: DID YOU ALSO COMMUNICATE WITH PLURIS ABOUT THIS ISSUE?

14 A: Yes, I did. I contacted Pluris' employee Randy Hoffer who informed me that Pluris refused  
15 to accept the wastewater collection system including grinder pumps and low-pressure facilities  
16 because I chose to do business with ONSWC instead of Pluris. As I understand Pluris' motivations,  
17 the expansion of the Majestic Oaks WWTP, as agreed to in the Development Agreement, was seen  
18 as a mutually exclusive alternative to growing the customer base for Pluris' Hampstead WWTP.  
19 In summary, Pluris was exacting a retribution against our company because we chose to do  
20 business with ONSWC instead of Pluris and that decision threatened the financial success of  
21 Pluris' business plans in the Pender County area. Unfortunately, we have experienced difficulty in  
22 finding Mr. Hoffer because he no longer works for Pluris and my understanding is that he has  
23 moved to another state.

1 Q: TO BE CLEAR, ONSWC NEVER EXPRESSED ANY CONCERN OR RESERVATION  
2 ABOUT GRINDER PUMPS AND LOW-PRESSURE FACILITIES BEING A PART OF THE  
3 WASTEWATER COLLECTION SYSTEM UNTIL AFTER IT REACHED A PURCHASE  
4 AGREEMENT WITH PLURIS?

5 A: That is correct.

6 Q: IS IT YOUR BELIEF THAT THE ONLY REASON THAT ONSWC CAME TO  
7 EXPRESS THOSE CONCERNS IS BECAUSE PLURIS FORCED ONSWC TO DO SO?

8 A: That is correct, and I based that belief upon what I heard from Mr. McDonald and Mr. Hoffer,  
9 and the circumstances surrounding ONSWC's changed position. In addition, in response to data  
10 requests, we have obtained copies of email communications between ONSWC and Pluris, wherein  
11 Mr. Gallarda attempts to persuade Mr. McDonald to not accept the wastewater collection system  
12 with grinder pumps.<sup>1</sup> Copies of these emails are attached hereto as WLI Investments Direct Exhibit  
13 4. While I would not argue that these emails conclusively demonstrate Pluris' control over  
14 ONSWC, given the statements that Mr. McDonald and Mr. Hoffer made to me and all of the  
15 circumstances of ONSWC's changed position, it is clear to me that Pluris used its position as buyer  
16 of ONSWC's system to force ONSWC to stop cooperating with us and to enforce Pluris' position  
17 on grinder pumps before the sale of the utility was completed. Also included in those emails are  
18 communications between Mr. Gallarda and his staff, which demonstrate that Pluris knew about  
19 the existing of the Development Agreement as a binding contract, including ONSWC's agreement  
20 to expand the Majestic Oaks WWTP, and the agreement to serve 338 homes. It is also clear from  
21 these emails that additional communications were made between ONSWC and Pluris that were  
22 not written communications provided in discovery responses.

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<sup>1</sup> See WLI Investments Direct Exhibit No. 4, p. 17.



1 Q: YOU BELIEVE THAT ONSWC'S CONDUCT WAS UNREASONABLE AND  
2 JUSTIFIES THE COMMISSION PENALIZING ONSWC?

3 A: Yes. As I testified earlier, I believe that it is unreasonable for public utilities to breach their  
4 contract agreements. My primary concern, and what brought us to this proceeding before the  
5 Commission, is that if the Commission approved the Respondents' purchase and transfer plans,  
6 the Commission's decision could void the Development Agreement as an enforceable contract. I  
7 understand that the Commission exercises police powers of the state and if the Commission found  
8 that the expansion of the Majestic Oaks WWTP was not in the public interest, then ONSWC would  
9 not have to fulfill its agreement to expand Majestic Oaks. Because Pluris refuses to accept the  
10 wastewater collection system with grinder pumps and low-pressure facilities, I am unable to  
11 construct the force main and wastewater collection system in the Lea Lots, the Lea Lots are left  
12 with no adequate wastewater service, and the Lea Lots would be undevelopable.

13 I also understand that the Commission cannot award damages for a breach of contract;  
14 however, I believe that it is appropriate for the Commission to penalize ONSWC to punish  
15 ONSWC for its unreasonable conduct and to deter other public utilities from engaging in similar  
16 conduct in the future. I recognize that a significant amount of time has passed since the filing of  
17 the Complaint, so I will leave to the Commission's discretion whether this penalty should be the  
18 maximum \$1,000/day or some other amount sufficient to punish ONSWC and deter other utilities  
19 from engaging in similar conduct.

20 Q: HAVE YOU REVIEWED THE RESPONDENTS' FILINGS IN THIS PROCEEDING  
21 WHERE THEY ALLEGE THAT WLI INVESTMENTS IS ATTEMPTING TO STALL OR  
22 DELAY THE PURCHASE AND TRANSFER?

23 A: Yes, I have.

1 Q: DO YOU HAVE A RESPONSE TO THAT ALLEGATION?

2 A: Yes. First, to be clear, that is not why WLI Investments filed the complaint in this  
3 proceeding nor why WLI Investments requested that the transfer proceeding be held in abeyance.  
4 We filed the complaint because our company was being treated unreasonably and the Respondents'  
5 conduct was impacting our ability to complete work and perform on our own contracts to construct  
6 and sell homes and to make the Lea Lots ready for development. As I mentioned earlier, we felt  
7 that it was important to resolve these issues before the Commission decided whether to approve  
8 the requested purchase and transfer.

9 Second, this allegation does not make sense because WLI Investments has no incentive to  
10 delay or obstruct the expansion of wastewater treatment capacity in the Pender County area. Our  
11 company needs access to wastewater treatment capacity to do business, but we believe that the  
12 Development Agreement is reasonable and enforceable as a contract between WLI Investments  
13 and ONSWC. If the Commission determines that Majestic Oaks WWTP should be closed and  
14 Pluris' Hampstead WWTP is the option that best service the public interest, that is certainly within  
15 the Commission's authority and jurisdiction. However, I would request that the Commission  
16 protect our contract rights under the Development Agreement as much as possible in doing so.  
17 That requires a Commission decision on the issues that we have raised in the Complaint so that we  
18 understand our rights under the Development Agreement and can obtain certainty about our plans  
19 for the development of Salters Haven at Lea Marina.

20 **III. TESTIMONY IN SUPPORT OF COUNT TWO OF THE COMPLAINT.**

21 Q: IN COUNT TWO OF THE COMPLAINT WLI INVESTMENTS ALLEGES THAT  
22 PLURIS UNLAWFULLY CONTROLLED ONSWC PRIOR TO COMMISSION APPROVAL

1 OF THE PURCHASE AND TRANSFER OF ONSWC'S UTILITY ASSETS AND FRANCHISE,  
2 IS THAT CORRECT?

3 A: Yes, that is correct. As I stated earlier, ONSWC indicated to WLI Investments that it  
4 understood and would accommodate the use of grinder pumps and low-pressure facilities in the  
5 308-home Salters Haven at Lea Marina subdivision and the 30-home Lea Lots. That was the  
6 parties' understanding at the time the Development Agreement was signed. As I also stated earlier,  
7 ONSWC did not express any objection to grinder pumps and low-pressure facilities until after it  
8 agreed to the sale and transfer of its utility assets and franchise for this service area to Pluris. My  
9 conversations with John McDonald of ONSWC and Randy Hoffer of Pluris confirmed that it was  
10 Pluris' policy against grinder pumps and low-pressure facilities and the threat that Pluris would  
11 back out of the purchase agreement if WLI Investments was allowed to install grinder pumps and  
12 low-pressure facilities in the Lea Lots within Salters Haven at Lea Marina subdivision that  
13 prompted ONSWC's changed position. In addition, in response to data requests, WLI Investments  
14 obtained responses to the effect that ONSWC does not have a policy addressing the  
15 appropriateness of grinder pumps, but Pluris' position is that stated in its April 15, 2021 filing in  
16 Docket No. W-1305, Sub 29, that "due to the costs and maintenance responsibilities that grinder  
17 pump systems impose on homeowner/ratepayers, the less expensive alternative for ratepayers is a  
18 traditional gravity flow and lift station collection system design." Pluris further stated that its  
19 "policy continues to be...that based on its experience in dealing with such systems, and the  
20 inevitable issues with the grinder pumps necessitated by such systems, it does not favor use of  
21 grinder pumps and low-pressure systems and will not willingly agree to installation of a low-  
22 pressure system when a traditional gravity flow and lift station collection system design is  
23 feasible." As I also mentioned earlier in my testimony, we have obtained copies of email

1 communications between Mr. Gallarda and Mr. McDonald that show how Pluris was attempting  
2 to persuade ONSWC to enforce its position against grinder pumps. Again, while no one piece of  
3 evidence is conclusive, given all the circumstances it is clear to me that Pluris was controlling  
4 ONSWC prior to the Commission's approval of the transfer and that ONSWC was allowing Pluris  
5 to direct and control its operational decisions with respect to performance on the Development  
6 Agreement.

7 Q: YOU BELIEVE THAT THIS BEHAVIOR IS UNLAWFUL?

8 A: Yes, although I am not a lawyer, I understand the basic requirements of public utilities to act  
9 reasonably and to comply with state law. Specifically, I understand that a change in utility  
10 ownership by whatever means or a change in operational control of a public utility requires the  
11 prior approval of the Commission pursuant to N.C. Gen. Stat. § 62-110 and -111. Pluris imposing  
12 its policy related to grinder pumps and low-pressure systems on ONSWC is an exercise of  
13 operational control prior to Commission approval of the sale and transfer of the franchise held by  
14 ONSWC. I recognize that our company is not a utility customer in the traditional sense, but as I  
15 testified earlier, we are in a similar position as a utility customer because we are dealing with  
16 public utilities that have a monopoly position on wastewater treatment service in the Pender  
17 County area. I would also note that the definition of "service" included in N.C. Gen. Stat.  
18 § 62-3(27) is broad and includes the type of activities contemplated in the Development  
19 Agreement as "service furnished by a public utility" or as "any ancillary service or facility used in  
20 connection with such service."

21 Q: YOU BELIEVE THAT IT WOULD BE APPROPRIATE FOR THE COMMISSION TO  
22 PENALIZE PLURIS FOR THIS CONDUCT?

1 A: Yes, I do. In addition to declaring the rights of the parties, I believe that the Commission  
2 would be justified in penalizing Pluris for unlawfully controlling ONSWC with respect to the  
3 acceptance of the wastewater collection system that includes grinder pumps and low-pressure  
4 facilities. As with ONSWC, I will leave to the Commission's discretion the amount of the penalty  
5 up to the maximum \$1,000/day, running from the date that ONSWC first indicated to WLI  
6 Investments would not accept the wastewater collection system. That date can be established based  
7 on Mr. McDonald's email communication to our project engineer, which is included in my  
8 Exhibit 4 at page 8, where he definitively indicates ONSWC's changed position.

9 **IV. TESTIMONY IN SUPPORT OF COUNT THREE OF THE COMPLAINT.**

10 Q: WHY DO YOU BELIEVE THAT PLURIS' POLICY RELATED TO GRINDER PUMPS  
11 AND LOW-PRESSURE FACILITIES IS UNREASONABLE AND UNJUST?

12 A: First, it is my understanding that "reasonableness" is a standard of conduct for public  
13 utilities, which requires utilities to have a rational and articulable basis for policies related to utility  
14 service. For a policy to be reasonable, it must be rationally related to avoiding some problems or  
15 expenses to the utility that can be demonstrated to be unnecessarily burdensome to the utility or  
16 its customers. Second, I understand Pluris' concerns about grinder pumps and low-pressure  
17 facilities, although I believe that the concerns are overstated because wastewater collection  
18 systems that include grinder pumps and low-pressure facilities deliver the same quality of effluent  
19 to the utility for treatment. In addition, with respect to Salters Haven at Lea Marina, the restrictive  
20 covenants for the subdivision require the homeowner to be responsible for grinder pump  
21 maintenance and providing uninterrupted power supply to the grinder pumps, and include a  
22 prominent notice to that effect. It is anticipated that the Lea Lots would have a similar requirement.

1 With these requirements in place, there is no impact to the utility from having grinder pumps and  
2 low-pressure facilities present as components of the wastewater collection system.

3 Q: DOES THE DEVELOPMENT AGREEMENT REFLECT THIS ARRANGEMENT?

4 A: Yes, it does. Section 16.6 of the Development Agreement requires WLI Investments to  
5 take appropriate steps to give notice to the homeowner regarding the presence of grinder pumps  
6 and the homeowners' responsibilities for maintenance and providing uninterrupted power. There  
7 is nothing in this Section 16.6 that limits the application to Salters Haven at Lea Marina subdivision  
8 (308 homes) to the exclusion of the Lea Lots (30 homes). Section 16 details the conditions for the  
9 conveyance of the "Wastewater Collection System Assets," a phrase that is not defined in the  
10 Development Agreement. Without any limiting language or a definition of this phrase, Section 16  
11 is best understood as applying to the entire "Subdivision," as defined in the Development  
12 Agreement to include both Salters Haven at Lea Marina (308 homes) and the Lea Lots (30 homes).  
13 This is consistent with Section 16's use of the defined term "Wastewater Collection System  
14 Phase," which is defined at Section 1.32 of the Development Agreement to mean "any discrete  
15 portion of the Wastewater Collection System constructed during a particular phase of development  
16 of the Subdivision." This is also consistent with the definition of "On-Site Wastewater Collection  
17 System" which specifically includes Wastewater Service Lines (defined at Section 1.34 of the  
18 Development Agreement as the line that extends from the wastewater cleanout or Grinder Pump  
19 Valve Box to ONSWC wastewater main located at or near the street) and "pressure sewer lines."  
20 There is no definition of "ESA Wastewater Collection System" or "Wastewater Collection System  
21 Assets" included in the Development Agreement, despite the terms being capitalized in the  
22 Development Agreement. Without a definition of those terms, the Commission will be required to

1 interpret these phrases, consistent with the intent of the parties, as I spoke about earlier in my  
2 testimony.

3 Q: IS IT YOUR UNDERSTANDING THAT GRINDER PUMPS AND LOW-PRESSURE  
4 LINES ARE NECESSARY IN SALTERS HAVEN AT LEA MARINA AND IN THE LEA  
5 LOTS?

6 A: Yes, it is. I was advised by our engineer that the depth of excavation required to properly  
7 design and construct a gravity-fed wastewater collection system was both practically and  
8 economically prohibitive. In this sense, the design of a wastewater collection system that includes  
9 grinder pumps and low-pressure lines in the Lea Lots complies with Pluris' policy because a  
10 traditional gravity flow and lift station collection system design is not feasible.

11 Q: WHY DO YOU BELIEVE THAT A TRADITIONAL GRAVITY FLOW AND LIFT  
12 STATION COLLECTION SYSTEM DESIGN IS NOT FEASIBLE IN SALTERS HAVEN AT  
13 LEA MARINA AND IN THE LEA LOTS?

14 A: We had our engineer evaluate the feasibility of design and construction of a gravity-fed  
15 wastewater collection system, and were advised that the excavation depths required to design and  
16 construct a properly functioning gravity flow and lift station collection system was problematic in  
17 two ways. First, the engineers expressed concern that excavation in the low-lying area of Salters  
18 Haven at Lea Marina and of the Lea Lots would be required to a depth below the relatively shallow  
19 water table. This introduces additional complexity in the excavation work, such as required de-  
20 watering through the use of pumps, installation of retaining walls, and concerns about shifts in the  
21 bottom of the excavation due to settling and water intrusion. Second, we evaluated the economics  
22 of the more complex excavation required and found that the installation of a gravity flow and lift  
23 station collection system was unnecessarily expensive. Although costs were a relevant factor, it

1 was not the only factor we considered. In short, it was our conclusion that a gravity flow and lift  
2 station collection system is not feasible in parts of Salters Haven at Lea Marina and in the Lea  
3 Lots. Third, understanding the topography of the area and the design requirements for gravity  
4 sewer is key to appreciating the challenges we faced: the lowest elevation lots in Salters Haven  
5 and the Lea Lots are essentially at 0 elevation, sea level, but the delivery point to connect to the  
6 utility's system is approximately 30 feet above sea level. To install a gravity fed system in these  
7 conditions would require a wet well or pump station at the point of deliver to the utility (and  
8 perhaps additional wet wells or pump stations in the system), but that wet well or pump station  
9 must be at a depth to allow for proper sloping in the wastewater collection system lines. This means  
10 that the wet well or pump station would have to be 50 feet or more underground, deeper than any  
11 similar type of facility than I have ever seen in my many years of building wastewater collection  
12 systems. We did not order a formal study or evaluation from our engineers because the problems  
13 with a gravity fed wastewater collection system were so obviously difficult to be impractical and  
14 maybe impossible.

15 In my experience working with engineers, anything can be built given enough time and  
16 money. However, in the real-world tradeoffs must be made. Our initial evaluation of the  
17 requirements for designing and constructing a properly functioning gravity-fed system in Salters  
18 Haven and the Lea Lots would result in an additional \$1 million in construction expenses, as a  
19 rough estimate.

20 Q: WHY DO YOU BELIEVE THAT PLURIS' POLICY RELATED TO GRINDER PUMPS  
21 AND LOW-PRESSURE FACILITIES IS UNREASONABLE AND UNJUST?

22 A: First, because the policy is not supported by any rational relationship to any problem or  
23 expense to the utility, particularly when the restrictive covenants in place for Salters Haven at Lea



1 Marina and those restrictive covenants to be put into place for the Lea Lots and the Development  
2 Agreement are in agreement that grinder pump maintenance and operation are the homeowners'  
3 responsibility. In fact, in response to our data requests we received responses that ONSWC and  
4 Pluris currently serve systems that include grinder pumps, and that ONSWC does not have a policy  
5 with respect to grinder pumps and low-pressure lines. Second, because a gravity flow system is  
6 not feasible in Salters Haven at Lea Marina or in the Lea Lots, Pluris is not following its own  
7 policy when it refuses to accept the low-pressure wastewater collection system in Salters Haven at  
8 Lea Marina or the Lea Lots.

9 Q: DO YOU BELIEVE THAT PLURIS' POLICY OF REFUSING WASTEWATER  
10 COLLECTION SYSTEMS THAT INCLUDE GRINDER PUMPS AND LOW-PRESSURE  
11 FACILITIES IS IN VIOLATION OF ANY OTHER PROVISIONS OF CHAPTER 62?

12 A: Yes, in addition to being unreasonable as an arbitrary policy and additional to Pluris  
13 unlawfully controlling ONSWC, it is my understanding that the reasonable conduct standard  
14 requires a utility to avoid arbitrary decisions or changes in policies or practices and abstain from  
15 using its superior bargaining power to exact retribution against others. In addition, I understand  
16 that the prohibition on discrimination under N.C. Gen. Stat. § 62-140 requires a public utility to  
17 treat similarly situated customers in the same or similar manner.

18 Q: WHY DO YOU BELIEVE THAT PLURIS' POLICY AGAINST ACCEPTING  
19 WASTEWATER COLLECTION SYSTEMS THAT INCLUDE GRINDER PUMPS AND LOW-  
20 PRESSURE FACILITIES IS AN ARBITRARY POLICY OR DECISION?

21 A: Because my experience and knowledge of how wastewater collection systems and  
22 wastewater treatment plants operate informs my view that grinder pumps and low-pressure  
23 facilities deliver the same kind and quality of wastewater effluent to the utility for conveyance to

1 its wastewater treatment plant. For Pluris to prohibit use of these components that are necessary  
2 parts of a properly engineered wastewater collection system when it has no impact on the utility's  
3 operations is what make this policy an arbitrary policy or decision.

4 Q: DO YOU RECOGNIZE THAT THE RESPONDENTS HAVE EXPRESSED  
5 CONCERNS ABOUT GRINDER PUMPS IN THAT CUSTOMERS WILL CALL THE  
6 UTILITY WHEN THE GRINDER PUMPS FAIL TO OPERATE, EITHER BECAUSE OF LOSS  
7 OF POWER OR BECAUSE OF A MALFUNCTION?

8 A: Yes, I do, and that is why we structured the Restrictive Covenants for Salters Haven at Lea  
9 Marina to provide a clear and prominent statement that grinder pump maintenance and repair and  
10 the responsibility to provide uninterrupted power to the grinder pumps is the homeowner's  
11 responsibility. This is also reflected in the Development Agreement in Section 16.6,  
12 "Responsibilities for Grinder Pump Station and Service Lines," which reads in part, "[a]fter the  
13 completed initial installation of a Grinder Pump Station by the homebuilder or WLI Investments,  
14 LLC, the lot owner shall own, operate, maintain, repair, and replace the components of its Grinder  
15 Pump Station with oversight provided by ONSWC." That same section requires WLI Investments  
16 to give notice to the buyer of any lots in Salters Haven at Lean Marina that have a grinder pump  
17 of this responsibility. Later in that same section, in all capitalized text, the Development  
18 Agreement provides, "NEITHER ONSWC NOR WLI INVESTMENTS, LLC SHALL HAVE  
19 ANY RESPONSIBILITY OR LIABILITY WHATSOEVER SHOULD A PORTABLE  
20 GENERATOR DURING A POWER OUTAGE NOT BE CONNECT TO THE GRINDER PUMP  
21 STATION TO KEEP IT FROM OVERFLOWING OR BACKING UP." With the agreed-upon  
22 arrangement, the notice to buyers of lots where grinder pumps are installed, and the restrictive  
23 covenants requiring the homeowner to own, operate, maintain, repair and replace the components

1 of the grinder pumps, there is no impact to the utility from accepting a wastewater collection  
2 system that includes grinder pumps and low-pressure facilities.

3 In addition, we have a contract in place between the property owners' association and a  
4 qualified service provider to conduct annual inspections and routine maintenance on the grinder  
5 pumps, and to be available for service to homeowners should service needs come up unexpectedly.  
6 We did intentionally did this during the time when the property owners' association is controlled  
7 by the developer so that when homeowners take over management of the association it would be  
8 clear that the utility is not expected or required to service grinder pumps. We plan to take the same  
9 approach with respect to the development in the Lea Lots.

10 Q: ARE YOU AWARE OF OTHER SYSTEMS, SUBDIVISIONS, OR SERVICE AREAS  
11 THAT ARE SIMILARLY SITUATED AS SALTERS HAVEN AT LEA MARINA AND THE  
12 LEA LOTS, BUT RECEIVED DIFFERENT TREATMENT FROM PLURIS?

13 A: Yes, I am. In response to data requests, Pluris stated that it has two systems in which a relatively  
14 small number of customers are served with grinder pumps and low-pressure facilities, Wyndwater  
15 development and Coastal Plantation senior living community, "because those homes were built on  
16 lots that could not be served via a traditional gravity flow to lift station collection system."

17 Q: ARE YOU FAMILIAR WITH THE LOCATION AND GEOGRAPHY OF THE  
18 WYNDWATER DEVELOPMENT AND COASTAL PLANTATION SENIOR LIVING  
19 COMMUNITY?

20 A: Yes, I am. Both are located in Pender County, within approximately 5 miles of Salters  
21 Haven at Lea Marina and the Lea Lots. The three locations share a similar geography: the sites are  
22 low lying areas, adjacent to creeks, canals, or other waters that join the intercoastal water way. The  
23 geographic features that make Wyndwater and Coastal Plantation unserviceable by gravity flow

1 and lift station collection system are the same or very similar to the geographic features of Salters  
2 Haven at Lea Marina and the Lea Lots. I have included in this testimony a map of the locations of  
3 Salters Haven at Lea Marina, Wyndwater, and Coastal Plantation as WLI Investments Direct  
4 Exhibit 5, intended to demonstrate the proximity and similar geography of the three locations.

5 Q: DO YOU BELIEVE THAT THIS IS UNLAWFUL BEHAVIOR ON THE PART OF  
6 PLURIS?

7 A: Yes, I do. Again, I am not a lawyer, but I understand the basics of utility regulation and  
8 with the assistance of counsel have identified N.C. Gen. Stat. § 62-140 as a restriction on public  
9 utilities' behavior and conduct that makes it unlawful for a public utility to treat similarly situated  
10 customers in a different manner. As I mentioned earlier, although our company is not a utility  
11 "customer" in the traditional sense, the types of activities involved in transactions such as this one  
12 come within the definition of utility "service" set out in N.C. Gen. Stat. § 62-3(27). While this is  
13 not utility "service" in the way most people think of the service that they need from a utility, but  
14 the definition of "service" includes broad language such as "any service furnished by a public  
15 utility" and "any ancillary service or facility used in connection with such service." The activities  
16 involved in the performance of the Development Agreement are clearly a service furnished by a  
17 public utility or an ancillary service used in connection with such service. I believe that the  
18 Commission has an important role to play in regulating the activities of public utilities because a  
19 public utility has unequal bargaining power given its position as the only adequate provider of  
20 wastewater treatment and other utility services.

21 Q: YOU BELIEVE THAT PLURIS IS UNLAWFULLY DISCRIMINATING AGAINST  
22 WLI INVESTMENTS BY REFUSING TO ACCEPT THE WASTEWATER COLLECTION

1 SYSTEM DESIGN FOR THE LEA LOTS THAT INCLUDES GRINDER PUMPS AND LOW-  
2 PRESSURE LINES?

3 A: Yes, I do. I think that is made clear by the fact that Salters Haven at Lea Marina and the  
4 Lea Lots are in the same situation as Wyndwater and Costal Plantation.

5 Q: WHAT WOULD YOU LIKE FOR THE COMMISSION TO DO TO RESOLVE THIS  
6 SITUATION?

7 A: First, I feel it would be appropriate for the Commission to carefully consider the evidence  
8 that Pluris' policy against accepting grinder pumps and low-pressure facilities is not justified by  
9 any operational or financial impact to the utility and direct Pluris to either rescind its policy or stop  
10 enforcing its policy. Second, I would ask the Commission to consider that Pluris is applying its  
11 grinder pump policy in a discriminatory manner, by refusing to accept the wastewater collection  
12 system in the Lea Lots including the grinder pumps and low-pressure facilities, while accepting  
13 the wastewater collection systems for Wyndwater and Coastal Plantation that includes grinder  
14 pumps. On that basis, the Commission should declare that Pluris is in violation of N.C. Gen. Stat.  
15 § 62-140. Third, in light of this evidence, I would ask the Commission to declare that Pluris' policy  
16 is arbitrary, and therefore unjust and an unreasonable prejudice or disadvantage and unenforceable  
17 against WLI Investments. Fourth, I ask the Commission to order Pluris to accept the wastewater  
18 collection system to be constructed in the remainder of Salters Haven at Lea Marina and the Lea  
19 Lots including grinder pumps and low-pressure facilities. Fifth, in ordering Pluris to accept the  
20 wastewater collection systems it would also be appropriate to assign Salters Haven at Lea Marina  
21 and the Lea Lots to Pluris's North Carolina service area through the issuance of a certificate of  
22 public convenience and necessity or an extension of a certificate to contiguous territory. I  
23 recognize that there are challenges in doing this because of the timing of the pending transfer

1 approval and the need to obtain permits from NC DEQ, but I believe that the Commission can  
2 resolve that timing problem by providing this direction subject to the Commission's decision on  
3 whether to approve the transfer. If the transfer is not approved, then the entirety of Salters Haven  
4 at Lea Marina and the Lea Lots should be assigned to ONSWC; and if the transfer is approved,  
5 then these areas should be assigned to Pluris.

6 **V. TESTIMONY IN SUPPORT OF COUNT FOUR OF THE COMPLAINT.**

7 Q: PLEASE DESCRIBE AGAIN IN MORE DETAIL HOW PLURIS' CONDUCT HAS  
8 IMPACTED YOUR ABILITY TO DO BUSINESS?

9 A: Building on my prior testimony that demonstrates how and why Pluris has controlled  
10 ONSWC, the result of this conduct is that we cannot complete the work required to allow for the  
11 complete development of the Salters Haven at Lea Marina subdivision (308 homes) and the work  
12 to make the Lea Lots (30 homes) ready for development. Without the ability to obtain permits,  
13 WLI Investments cannot construct the wastewater collection system it is required to build under  
14 the Development Agreement, nor can WLI Investments perform on its agreement with Mr. Lea to  
15 construct the force main and collection system to make the Lea Lots ready for development. WLI  
16 Investments cannot obtain permits because ONSWC refuses to cooperate, and this refusal is a  
17 result of Pluris exerting control over ONSWC. Based on what I was told by Mr. McDonald and  
18 Mr. Hoffer, I believe that this is a negotiation tactic to force WLI Investments to install a gravity  
19 flow wastewater collection system in Salters Haven and enforce Pluris' unreasonable and arbitrary  
20 grinder pump policy. As I have explained earlier, installation of a gravity-fed wastewater collection  
21 system in Salters Haven at Lea Marina and in the Lea Lots is prohibitively expensive because of  
22 the depths of excavation required to properly slope the facilities. In addition, I have serious doubts  
23 that excavation to the depth required to properly install gravity-fed sewer is possible given the

1 shallow depth of the water table in this area of Pender County. Finally, I am also concerned that if  
2 the Commission allows this type of conduct, Pluris will repeat its behavior in my future dealings  
3 with Pluris.

4 **VI. TESTIMONY IN SUPPORT OF COUNT FIVE OF THE COMPLAINT.**

5 Q: WHY DO YOU BELIEVE THAT PLURIS AND ONSWC COORDINATED WITH  
6 EACH OTHER IN THEIR DEALINGS WITH YOUR COMPANY RELATED TO SALTERS  
7 HAVEN AT LEA MARINA?

8 A: First, that is what I was told in separate conversations by Mr. McDonald and Mr. Hoffer,  
9 as I mentioned earlier in my testimony. Second, as I also mentioned earlier, we have obtained  
10 email communications between Mr. McDonald and Mr. Gallarda (*see* WLI Investments Direct  
11 Exhibit 4) that demonstrate that Pluris was attempting to persuade ONSWC to not accept the  
12 wastewater collection system that includes grinder pumps. While these communications by  
13 themselves are not conclusive in demonstrating Pluris' control over ONSWC, it is clear evidence  
14 that there was coordination between the two utilities. Third, the circumstances speak for  
15 themselves: ONSWC was fully willing to allow grinder pumps and low-pressure facilities in  
16 Salters Haven at Lea Marina and the Lea Lots and even suggested the use of grinder pumps as an  
17 option for us. ONSWC only expressed an unwillingness to sign permit applications after Pluris  
18 became involved. As I have already testified, Pluris' policy against grinder pumps and low-  
19 pressure facilities is unreasonable and arbitrary itself. In addition, Pluris is enforcing the policy  
20 through unjust, unreasonable, and unlawful means of controlling ONSWC, and ONSWC is  
21 carrying out Pluris' direction to not cooperate with us in our permit applications, it is clear that  
22 there is some measure of coordination between the Respondents. This coordination in carrying out

1 unjust and unreasonable practices is itself an additional violation of the standards of reasonableness  
2 that applies to public utilities' conduct in providing service.

3 **VII. TESTIMONY IN SUPPORT OF COUNT SIX OF THE COMPLAINT.**

4 Q: IN COUNT SIX OF THE COMPLAINT WLI INVESTMENTS ALLEGES THAT  
5 THERE IS A NEED TO SECURE REASONABLY ADEQUATE SERVICE OR FACILITIES  
6 FOR THE LEA LOTS, IS THAT CORRECT?

7 A: Yes, because of the manner that Pluris and ONSWC have conducted themselves in dealing  
8 with WLI Investments with respect to Salters Haven at Lea Marina and the Lea Lots, there is a  
9 complete lack of access to utility service in a portion of the Subdivision, specifically, the Lea Lots.  
10 We are unable to apply for permits to construct the force main and wastewater collection system  
11 because the Respondents are not cooperating with us. Without the permits, we cannot construct  
12 the wastewater collection system and force main that we agreed to build in the Development  
13 Agreement, or perform on our contract with Mr. Lea. Without a properly constructed wastewater  
14 collection system, we cannot provide access to wastewater treatment service for the future owners  
15 of the Lea Lots. To my knowledge, there is no alternative wastewater treatment service provider  
16 that is ready, willing, and able to provide this service, in part because it is expected that a public  
17 utility would extend service to the Lea Lots as contiguous to the service area in the remainder of  
18 Salters Haven at Lea Marina, whether that would be ONSWC as the current holder of the franchise  
19 or Pluris as the potential purchaser of the franchise from ONSWC.

20 Q: IS THE ABILITY TO OBTAIN PERMITS FOR THE CONSTRUCTION OF THE  
21 WASTEWATER COLLECTION SYSTEM IN THE LEA LOTS THE ONLY IMPEDIMENT TO  
22 BEGINNING THE CONSTRUCTION WORK?

23 A: Yes.



1 Q: IS THERE ANY IMPEDIMENT TO OBTAINING PERMITS FROM DEQ?

2 A: The only impediment is that the Respondents refuse to cooperate with us in making  
3 applications to DEQ, and in promptly applying to the Commission for an extension of the  
4 Certificate of Public Convenience and Necessity (“CPCN”) issued to ONSWC for this service  
5 area.

6 Q: DID ONSWC AGREE IN THE DEVELOPMENT AGREEMENT TO COOPERATE IN  
7 OBTAINING PERMITS AND APPLYING FOR A CPCN EXTENSION?

8 A: Yes, it did. In Section 4 of the Development Agreement, ONSWC agreed that (1) it would  
9 not unreasonably withhold, condition, or delay approval of the On-Site Wastewater Collection  
10 System Plans; (2) it would file a Sewer Extension Permit application with DWR; and (3) if  
11 required, it would seek approval from Pender County of the On-Site Wastewater Collection  
12 System Plans. More specifically, in Section 4.1 ONSWC agreed to “cooperate fully” with WLI  
13 Investments to “expedite issuance of the Sewer Extension Permit by DWR and approval by”  
14 Pender County of the plans, if required. Those agreements are relevant to the “On-Site Wastewater  
15 Collection System” which is defined in Section 1.28 of the Development Agreement as the  
16 equipment “that will deliver wastewater produced by the houses within the Subdivision.” Again,  
17 “Subdivision” is defined at the 338-single family development known as Salters Haven at Lea  
18 Marina. Section 5 of the Development Agreement contains almost the exact same language and  
19 promises with respect to the installation of the “ESA Wastewater Collection System.” “ESA  
20 Wastewater Collection System” is not defined in the Development Agreement. In addition, in  
21 Section 8 of the Development Agreement ONSWC promised to apply to the Commission “as soon  
22 as may be practicable for a Certificate or Certificate Extension to provide wastewater in the

1 Subdivision.” As I noted earlier, “Subdivision” is defined to include the full 338-home buildout of  
2 Salters Haven at Lea Marina and the Lea Lots.

3 Q: HAS ONSWC FULFILLED THESE AGREEMENTS?

4 A: Only partially. As of today, there are 221 completed connections in Salters Haven at Lea  
5 Marina. Those were, of course, permitted by DEQ with the cooperation and approval of ONSWC.  
6 ONSWC’s CPCN authorizes service to 277 customers in Salters Haven at Lea Marina. That is less  
7 than the expected and agreed-upon 338 customer connections, so additional regulatory approvals  
8 are required to complete the development of Salters Haven at Lea Marina and the Lea Lots. In  
9 addition, as noted throughout my testimony, the Development Agreement relates to the  
10 “Subdivision,” defined as inclusive of Salters Haven at Lea Marina and the Lea Lots. To date,  
11 there has been no application for an extension of a CPCN to cover the remainder of the  
12 “Subdivision,” so the Development Agreement remains only partially performed. In addition, as I  
13 noted earlier, ONSWC has withheld its cooperation and approval of the plans for the wastewater  
14 collection system in the Lea Lots.

15 Q: WHAT WOULD YOU LIKE FOR THE COMMISSION TO DO TO REMEDY THIS  
16 SITUATION?

17 A: We have asked for several forms of relief in the Complaint that would remedy this situation  
18 for us and allow us to get back to our regular business of building homes. With respect to the  
19 uncertainty that we face regarding development of the Lea Lots, the Commission could resolve  
20 this by declaring the status of the parties’ rights and legal relations under the Development  
21 Agreement, and specifically, declaring that grinder pumps and low-pressure facilities are permitted  
22 in the “Subdivision.” In addition, the Commission should recognize the need for adequate service  
23 in the remainder of Salters Haven at Lea Marina and the Lea Lots, and direct the Respondents,

1 individually or jointly, to fulfill the obligations of the Development Agreement related to  
2 cooperating with permitting. Finally, the Commission could resolve the uncertainty we currently  
3 face by expanding the previously issued CPCN to cover the entirety of Salters Haven at Lea Marina  
4 and the Lea Lots, authorizing service to up to 338 customers, and assigning the obligation to  
5 provide service in the subdivision to one of the Respondents.

## 6 **VIII. CONCLUSION**

7 Q: IS THERE ANYTHING ELSE THAT YOU WOULD LIKE FOR THE COMMISSION  
8 TO BE AWARE OF WITH RESPECT TO THIS PROCEEDING?

9 A: Yes, I would like the Commission to know that I find it regrettable that we have been forced  
10 to bring this complaint against the Respondents. I try to be cooperative in my dealings and in my  
11 30+ years' experience working in the real estate development business, I have had only a few  
12 contentious disagreements with utilities. We wouldn't be here if it was possible to work out a  
13 compromise, which I instructed my attorneys and employees to attempt to do prior to filing the  
14 complaint in this case. That being said, I find that I have nowhere else to turn to hold the  
15 Respondents accountable for their unreasonable conduct and their violations of the Public Utilities  
16 Act. If the Commission grants the relief requested in the complaint, WLI Investments will be able  
17 to return to normal business operations and the Respondents will be appropriately punished for  
18 their conduct and deterred from engaging in similar conduct in the future.

19 Q: IS THIS THE END OF YOUR TESTIMONY?

20 A: Yes, it is.