

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. W-1148, SUB 22
DOCKET NO. W-354, SUB 411

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | |
|--|--|
| In the Matter of Application by Carolina Water Service, Inc. of) North Carolina, 5821 Fairview Road, Suite 401,) Charlotte, North Carolina 28209 and Mountain Air) Utilities Corporation, Post Office Box 1090,) Burnsville, North Carolina 28714, for Authority to) Transfer the Mountain Air Water and Wastewater) Utility Systems and Public Utility Franchise in) Yancey County, North Carolina, and for Approval) of Rates) | REBUTTAL TESTIMONY OF RANDY BANKS ON BEHALF OF MOUNTAIN AIR UTILITIES CORPORATION |
|--|--|

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. William R. Banks. My business address is 311 Clubhouse Drive, P.O. Box 1037
3 Burnsville, NC 28714

4 **Q. DID YOU FILE DIRECT TESTIMONY ON BEHALF OF MOUNTAIN AIR**
5 **UTILITIES CORPORATION IN THESE DOCKETS?**

6 A. Yes.

7 **Q. WHAT ARE THE PURPOSES OF YOUR REBUTTAL TESTIMONY?**

8 A. I provide the history of the efforts of Mountain Air Utilities Corporation (“MAUC”)
9 to sell its water and sewer systems to a professionally run well-capitalized public
10 utility in accordance with the conditions previously agreed upon by the Public Staff
11 and the Mountain Air Property Owners Association. I also address certain issues
12 raised in the testimony of Public Staff witness Michael Franklin.

13 **Q. PLEASE OUTLINE THE CONVERSATIONS WITH THE PROSPECTIVE**
14 **PURCHASERS AND PUBLIC STAFF OVER THE YEARS REGARDING**
15 **THE POTENTIAL SALE OF THE MAUC SYSTEM?**

1 A. Beginning in late 2013 we had discussions with Aqua North Carolina regarding its
2 potential purchase of the MAUC system. Those discussions continued for some
3 time but ultimately did not bear fruit.

4 When the discussions with Aqua began, MAUC had a rate case pending in Docket
5 W-1148, Sub 9. We put that on hold to pursue the discussions with Aqua, which
6 process provided public record notice that MAUC was discussing a sale. Our
7 counsel was contacted by Martin Lashua of Carolina Water Service ("CWS"), who
8 expressed an interest in acquiring the MAUC system if the transaction with Aqua
9 did not come to pass. The transaction with Aqua did not come to fruition, and in
10 2015 or early 2016 we began negotiating a potential Asset Purchase Agreement
11 ("APA") with CWS.

12 Every prospective purchaser that has discussed acquiring the MAUC utility system
13 has been made aware that the tracts identified as "Fee Parcels" in the current Utility
14 Asset Purchase Agreement with CWS are owned by either Mountain Air
15 Development Corporation ("MADC"), which is MAUC's parent entity, or a MADC
16 affiliate, and are encumbered by judgment liens against both MADC and its
17 affiliate. Consistent with what I understand to be the Commission's requirements,
18 a condition of every prospective purchaser's potential acquisition of the MAUC
19 system has been the requirement that the purchaser acquire ownership and control
20 of all utility assets, including the Fee Parcels, free and clear of any liens and
21 encumbrances. The only path to that result is, and has been since the meeting and
22 agreement with the Public Staff in 2016, that the purchase price be in an amount
23 sufficient to secure release of the judgment liens as to the Fee Parcels

1 contemporaneously with closing the sale, using the sale proceeds to fund those
2 releases and to cover closing and transactional costs and fees.

3 During discussions with CWS it indicated that it would require that the Commission
4 approve an acquisition adjustment in the amount of the purchase price in order to
5 purchase the MAUC system. A meeting with Public Staff to discuss the potential
6 CWS acquisition was held in July 2016.¹ That meeting was attended by counsel for
7 CWS, one or more business people from CWS, myself, MAUC's counsel, Bill
8 Grantmyre from the Public Staff, other Public Staff personnel, and the President
9 and other members of the Mountain Air Property Owner's Association ("POA")
10 Board. During that meeting Mr. Grantmyre informed us that the Public Staff would
11 support approval of the transaction and approval of an acquisition adjustment in the
12 amount of a \$950,000.00 purchase price to facilitate the completion of the
13 transaction on several conditions. Those conditions included that the POA
14 document its support for the transfer and consent to the future rate impact of
15 including a \$950,000 acquisition adjustment in rate base, and that the MAUC
16 system remain on standalone rates and not be included in CWS's uniform statewide
17 rates. Shortly after that meeting the Mountain Air POA provided a letter and a
18 Resolution adopted by the Board of the POA on July 28, 2016. The letter and
19 Resolution speak for themselves. Section 2 of the Resolution states as follows:

20 The Association fully understands and accepts that as part of the
21 transaction, there will probably be a rate increase in the first year of
22 approximately \$20.00 per month to insure the Buyer can cover the
23 initial costs to purchase and operate the system. Additional

¹ In my Direct Testimony I stated that meeting occurred in the summer of 2017. I now realize that this meeting occurred in the summer of 2016.

1 increases over time shall be based on actual costs to operate the
2 system.

3 A copy of those documents is attached as Banks Rebuttal Exhibit 1.

4 The POA's letter and Resolution were provided to Public Staff and there was no
5 indication from Public Staff or other suggestion that the matters stated therein did
6 not sufficiently address the Public Staff's request that the POA document its
7 understanding of and consent to the future rate consequence of approval of a
8 \$950,000 acquisition adjustment. To be clear, the amount of the purchase price was
9 driven by what is necessary to secure the release of the Judgment Liens as to the
10 Fee Parcels and cover costs and fees, as mutually agreed upon by CWS and Public
11 Staff at the meeting in 2016.

12 Based on the July 2016 meeting with Public Staff and our understanding of the
13 conditions for Public Staff support of the approval of the transfer and acquisition
14 adjustment, we engaged in negotiations with CWS as to the terms of an APA for the
15 system. A series of changes in CWS's North Carolina senior management
16 complicated the effort to reach agreement on the terms of an APA. At one point,
17 CWS personnel new to the negotiations requested confirmation of the Public Staff's
18 position regarding the proposed transaction. In response Bill Grantmyre provided
19 a Memo to CWS's Catherine Heigel and Michael Cartin dated April 15, 2019, a
20 copy of which is attached as Banks Rebuttal Exhibit 2. The Public Staff's Memo
21 notes that "[t]he Mountain Air POA passed an approval vote several years ago, but
22 a current approval will be required including the Carolina Water services rates"

23 The POA subsequently provided an additional Resolution to Public Staff in July

1 2022 documenting its unqualified support for transfer of the MAUC system to
2 CWS, a copy of which is attached as Banks Rebuttal Exhibit 3.

3 Ultimately, continuing turnover in CWS's senior North Carolina management
4 and/or a business decision by CWS that it was no longer interested in acquiring
5 additional systems in North Carolina brought those negotiations to an end.

6 **Q. DID MAUC SUBSEQUENTLY ENTER INTO AN ASSET PURCHASE**
7 **AGREEMENT WITH ANOTHER UTILITY?**

8 A Yes. After being unable to complete a transaction with CWS, MAUC desperately
9 needed to get its system into the hands of a well-capitalized utility operator. In June
10 of 2020 MAUC entered into a Purchase and Sale Agreement with Red Bird Utility
11 Operating Company, LLC ("Red Bird") for the sale of MAUC's utility system
12 under the same price, terms and conditions that had been endorsed and approved
13 by the Public Staff and CWS in the 2016 meeting. An Application for Approval of
14 the Transfer of the system was filed by Red Bird in Docket W-1148, Sub 19. The
15 POA ultimately did not support the transfer of the MAUC system to Red Bird.

16 In connection with Red Bird's proposed acquisition of the MAUC system the Public
17 Staff took the position that a "survey" form or ballot had to be submitted to POA
18 members setting forth information regarding the proposed transaction, including
19 current rates and estimated future rates, based on Red Bird's projected investment
20 in the MAUC system and an acquisition adjustment in the amount of the purchase
21 price. The Public Staff informed the parties that it would not support the transfer
22 of the system to Red Bird unless a majority of the members of the POA voted in
23 favor of that transfer, in spite of the fact that the terms and conditions of that
24 proposed transfer were identical to those that it had supported during the previous

1 CWS negotiations. To that end, Public Staff required that POA members vote “for”
2 or “against” the proposed transfer. Ultimately, the POA refused to send the survey
3 to its members. Public Staff would not or could not force the POA to send the
4 survey. The end result was that the proposed transfer was stuck in limbo and
5 because the Transfer Application was not going to move forward, we eventually
6 terminated that agreement and the Transfer Application was withdrawn on April 12,
7 2021.

8 I have been working to get the MAUC system sold to a well-capitalized
9 professional utility operator for nearly 10 years, as I believe that is the best possible
10 outcome for MAUC’s customers. As detailed in my Direct Testimony, when the
11 sale of the system to Red Bird was no longer a possibility I had no financial choice
12 but to request that the Commission appoint an Emergency Operator for the MAUC
13 system, which I did later in April, 2021.

14 **Q. DID MAUC SUBSEQUENTLY ENTER INTO AN ASSET PURCHASE**
15 **AGREEMENT WITH CWS?**

16 A. Yes, after an apparent change in corporate strategy at CWS, MAUC entered into a
17 Utility Asset Purchase Agreement with CWS dated July 12, 2022. As noted in my
18 Direct Testimony, with the one exception noted below, the \$950,000 purchase price,
19 terms and conditions provided for in that Agreement are the same price, terms and
20 conditions which CWS agreed to during our prior negotiations, which Red Bird
21 also agreed to in 2020. With one exception (relating to uniform statewide rates,
22 which is addressed below) the current Agreement with CWS has the same terms
23 and conditions that the Public Staff (represented by Bill Grantmyre), CWS, MAUC
24 and the Mountain Air POA agreed upon in our meeting in 2016.

1 **Q. DID YOU UNDERSTAND THAT THERE WERE CONDITIONS TO THE**
2 **PUBLIC STAFF'S SUPPORT FOR APPROVAL OF AN ACQUISITION**
3 **ADJUSTMENT AND THE TRANSFER?**

4 A. Yes, the takeaway from the 2016 meeting with Public Staff was that the Mountain
5 Air POA would have to document its support for approval of the acquisition
6 adjustment and that the MAUC system remain on standalone rates and would not
7 go into CWS's statewide rates. As addressed in more detail below, it was
8 understood that the Public Staff's position on standalone rates later changed to
9 support MAUC being included in CWS's uniform statewide rates as an inducement
10 for CWS to agree to serve as emergency operator of the MAUC system.

11 **Q. WHAT POSITION DID THE PUBLIC STAFF TAKE WITH REGARD TO**
12 **RED BIRD'S PROPOSED PURCHASE OF THE MAUC SYSTEM?**

13 A. Prior to the filing of the Red Bird transfer application we had never understood that
14 a detailed customer balloting process would be required, and that Public Staff
15 would effectively leave the issue of whether it would support the transfer to a
16 customer vote, despite the pressing issues with regard to MAUC's system and
17 MAUC's inability to fund investment necessary to address those issues. The 2016
18 Resolution provided by the POA in support of the transfer to CWS had been
19 understood to be sufficient, as it reflected the POA's understanding and agreement
20 that rates would increase by approximately \$20.00 per month per customer as a
21 consequence of the approval of an acquisition adjustment. In connection with the
22 proposed Red Bird transfer the Public Staff for the first time took the position that
23 a detailed balloting process of individual POA members was necessary for it to
24 support the proposed transfer. The proposed Red Bird sale ultimately was killed by
25 the fact that the Public Staff established a new requirement for a detailed balloting

1 of the POA membership, and the POA refused to send out the ballot. I understand
2 that this sort of customer approval requirement was a novel and unique requirement
3 for Public Staff to support either approval of a transfer or approval of an acquisition
4 adjustment. That process certainly did not take into account the condition of the
5 MAUC system or the need to see it transferred to a well-capitalized professional
6 utility service provider.

7 **Q. ARE THERE PROVISIONS IN THE PURCHASE AGREEMENT WITH**
8 **CWS THAT ARE IN CONFLICT WITH THE POSITIONS THE PUBLIC**
9 **STAFF HAS ARTICULATED IN MR. FRANKLIN'S TESTIMONY?**

10 A. Yes. Section 5.01 of the CWS Agreement gives CWS the option, at its sole
11 discretion, to terminate the Agreement if the Commission either "establishes rate
12 base less than the sum of the Purchase Price, and Buyer's capital invested in the
13 Purchased Assets, or fails to approve use of Buyer's statewide uniform rates as part
14 of the transfer approval."

15 **Q. WHY WAS MAUC WILLING TO AGREE TO THOSE TERMS?**

16 A. We've understood since our meeting in 2016 that Public Staff would support
17 approval of an acquisition adjustment in the amount of the \$950,000 purchase price
18 if the POA documented its support for the transfer and understood the acquisitions
19 adjustment. The POA President and representatives not only agreed to such in that
20 meeting, but have confirmed their agreement and support for such in subsequent
21 resolutions adopted by the POA Board and signed by their authorized
22 representatives.

23 With regard to the requirement that the Commission approve use of CWS's uniform
24 rates, Public Staff had historically said that while it would support approval of the

1 acquisition adjustment, that the MAUC system would need to remain on standalone
2 rates. MAUC agreed to CWS's request that Section 5.01 include the uniform rate
3 approval condition to CWS's obligation to close only because of our understanding
4 that in order to induce CWS to agree to serve as emergency operator of MAUC,
5 that Bill Grantmyre informed CWS that Public Staff would support inclusion of the
6 MAUC system in CWS's statewide uniform rates. So, while this was a change in
7 Public Staff's position, we understood that Public Staff agreed to this change in
8 order to induce CWS to serve as emergency operator of MAUC. But for that
9 understanding, MAUC would not have agreed to this condition, as it was contrary
10 to the Public Staff's previously stated position regarding standalone rates.

11 **Q. YOU ARE AWARE THAT THE TERMS IN SECTION 5.01 OF THE APA**
12 **ENTITLE CWS TO TERMINATE THE AGREEMENT AND NOT**
13 **ACQUIRE THE MAUC SYSTEM, CORRECT?**

14 A. Yes I am, Section 5.01 of the CWS Agreement allows CWS to walk away if the
15 Commission approves the transfer of the system, but does not approve both an
16 acquisition adjustment and CWS's use of statewide rates. That potential scenario
17 begs the question of what would happen to MAUC's customers if the Commission
18 fails to approve the transfer of the MAUC system to CWS but doesn't approve the
19 acquisition adjustment and does not approve CWS's use of statewide uniform rates?
20 That is the very scenario that Public Staff now advocates, which is contrary to what
21 was agreed upon in the 2016 meeting where all parties (buyer, seller and customer)
22 were represented, and such a result would open the door to CWS walking away
23 from the deal, and presumably even seeking to be relieved of its appointment as
24 emergency operator. MAUC continues to have no ability to resume operation of

1 the system and I can only wonder what Public Staff envisions the situation will be
2 if CWS does not acquire the MAUC system – particularly in terms of insuring that
3 Mountain Air customers are able to receive adequate and reliable water and sewer
4 service.

5 Leaving aside the critically important question of how reliable utility service would
6 be provided to MAUC rate payers if CWS exercises its right to walk away, I also
7 wonder about the near term financial impact on MAUC customers of reimbursing
8 CWS for the over \$2,000,0000 that I understand it has invested in the system since
9 being appointed as emergency operator. My understanding is that if CWS walks
10 away the customers could be assessed immediately, presumably on some sort of
11 pro rata basis, whatever amounts are necessary to allow CWS to recoup its
12 investment in the MAUC system.

13 **Q. DO YOU DISAGREE WITH CERTAIN ASPECTS OF MR. FRANKLIN'S**
14 **TESTIMONY.**

15
16 A. Yes. For example, Mr. Franklin make the following statement at page 18 of his
17 testimony:

18 The Public Staff wants confirmation that the residents of the
19 Mountain Air Development, who are customers of MAUC,
20 understand and agree to the purchase price and acquisition
21 adjustment being included in their rates; and that they further
22 understand that the acquisition adjustment is to pay for the release
23 of liens that are not related to MAUC assets and operations
24

25 I believe that this statement is inaccurate. Certain MAUC utility assets are located
26 on the eight Fee Parcels, which are encumbered by judgments entered in Yancey
27 County Superior Court against Mountain Air Development Corporation (the parent
28 of MAUC) and others.

1 Mr. Franklin states that "approval of the proposed acquisition adjustment in this
2 proceeding is not in the public interest since the primary beneficiary of the payment
3 of the purchase price is Mountain Air Development Corporation which will pay its
4 lienholders for debts not incurred by MAUC for the fee parcels that should have
5 been owned and controlled by MAUC." (Franklin Testimony p. 20).

6 I absolutely disagree with the suggestion that there is no benefit to MAUC's
7 customers from approval of an acquisition adjustment here, or that it is not in the
8 public interest to see the MAUC system transferred to CWS. Aside from the fact
9 that the Public Staff endorsed the acquisition adjustment years ago, approval of an
10 acquisition adjustment in the amount of the purchase price is a condition of CWS
11 closing its acquisition of the system, and it is the only way that MAUC can agree
12 to the sale of the system and get the funds necessary to secure release of the
13 judgment liens as to the Fee Parcels. The obvious and substantial benefit to MAUC
14 customers, i.e., the public interest, is that this transaction will move these utility
15 systems to a professional well-capitalized utility operator, one that has already
16 invested over \$2,000,000 to address needs in the MAUC system. While the
17 judgment liens on the Fee Parcels arise from judgments entered against MADDC, not
18 MAUC, the beneficiaries of the approval of the acquisition adjustment are MAUC's
19 customers, who are the members of the Mountain Air POA. Absent approval of this
20 transaction on the previously agreed upon terms, which except for the uniform rate
21 condition are reflected in the current CWS Agreement, the POA members will be
22 left in a seriously precarious situation, as at that point I don't know who would be
23 operating the system and how they would propose to operate it. The only means by

1 which any purchaser can secure title to all of the assets needed for operation of the
2 utility system, including the Fee Parcels, is through the use of the purchase price to
3 secure release of the Judgment Liens as to those parcels contemporaneously at
4 Closing. Furthermore, if the Commission does not approve this transfer on terms
5 satisfactory to CWS, I will no longer be able to continue to pay for insurance,
6 property taxes, and other such expenses relating to MAUC. If yet another effort to
7 get the MAUC system into the hands of a well-capitalized professional utility is
8 thwarted, I will not be surprised if the judgment lien holders' patience is exhausted
9 and am concerned that they will pursue legal action as to the Fee Parcels. I don't
10 know how that would play out, but I would think it could impair access to those
11 properties where utility assets are located or otherwise destabilize the situation for
12 whoever is operating the system.

13 Mr. Franklin also states that the "[t]he present rates for the MAUC service area
14 were approved in Docket No. W-1148, Sub 23, and have been in effect since
15 December 20, 2022" (Franklin Testimony p. 8, lines 9- 11). This statement is
16 misleading. In December 2022 the Commission allowed MAUC to adjust its rate
17 for sewer service to pass through the Town of Burnsville's July 1, 2022 annual price
18 increase for the bulk sewer service it provides to MAUC. While MAUC has been
19 allowed to pass through the Town's annual rate increases for the bulk sewer service,
20 the rate for MAUC's water service has never been increased since the existing rate
21 was originally established in 2001.

22 **Q. HAVE YOU HAD A PRELIMINARY OPPORTUNITY TO REVIEW THE**
23 **LATE FILED DIRECT TESTIMONY OF THE MOUNTAIN AIR POA?**

24 **A.** Yes.

1 **Q. DO YOU AGREE WITH ANY ASPECTS OF THE POA'S TESTIMONY?**

2 A. Yes, I do agree with certain parts of Mr. Robertson's testimony. For example, Mr.
3 Robertson appropriately recognizes that the MAUC has for a number of years
4 sought to transfer its system to a professional utility, that substantial costs will be
5 incurred in doing so and the rates to consumers within the community would have
6 to increase in order for the acquiring utility to receive adequate remuneration.

7 (Robertson Testimony p. 4, lines 11-14).

8 I also appreciate his acknowledgment of the fact reflected earlier in my testimony
9 that the POA refused to conduct the survey required by the Public Staff in
10 connection with the proposed transfer of the MAUC system to Red Bird.

11 In addition, the Homeowner's Association reacted negatively to the
12 requirement that the residents be surveyed. The draft survey that was
13 being discussed would have had insufficient information to allow
14 residents to make an informed decision, and fundamentally we
15 questioned whether this was traditional practice and whether the
16 result would be worth the effort.

17 (Robertson Testimony p. 5, lines 8-12).

18
19 Mr. Robertson also recognizes the reality that the Public Staff has historically been
20 "supportive of a plant acquisition adjustment on the theory that costs per
21 connection within Mountain Air would be comparable to the costs per connection
22 within the Carolina Water Service systems charged the Company's uniform rates."

23 (Robertson Testimony p. 5, lines 26-29). I also believe the
24 following statement to be accurate.

25 We understood that the Public Staff would be supportive of Carolina
26 Water Service's acquisition with the inclusion of the purchase price
27 and rate base as a plant acquisition adjustment and that consumers

1 within Mountain Air would be charged Carolina Water Services
2 uniform rates. These discussions took place before CWS was
3 appointed as emergency operator and undertook restoration efforts
4 at considerable expense. Based on these discussions, in contrast to
5 its position with respect to the potential Red Bird acquisition, the
6 Homeowner's Association expressed its support for the Carolina
7 Water Service acquisition. In short, we relied upon the
8 representations of the Public Staff in formulating our position.
9

10 (Robertson Testimony p. 6, lines 1-8).

11 **Q. ARE THERE ASPECTS OF THE POA'S DIRECT TESTIMONY THAT YOU**
12 **DO NOT AGREE WITH?**

13 A. Yes. For example, there appears to be a fundamental misunderstanding that the
14 purchase price and the acquisition adjustment associated with it "would be used to
15 satisfy liens encumbering property owned by Mr. Banks or affiliated interests
16 within Mountain Air, including property that is part of the water and sewer utilities."
17 This reflects a serious misunderstanding of the situation. As shown in my Direct
18 Testimony, the eight Fee Parcels listed in Exhibit D to the CWS Agreement, all of
19 which are places where MAUC utility assets are located, are subject to and
20 encumbered by the Judgment Liens identified there.

21 As of May 2022, the principal and interest due on the four judgments identified in
22 that Exhibit D, which encumber all of the property owned by MADC and other
23 related entities, totaled \$21,570,0994. I point this out only to show that the
24 \$950,000.00 purchase price to be paid by CWS here will not "satisfy" the liens
25 resulting from those judgments – far from it - it is simply enough money to secure
26 the release of the Judgment Liens as to the Fee Parcels and to cover transaction
27 costs and fees. As noted in my Direct Testimony, I will not receive a dime of the
28 purchase price.

1 **Q. DID MADC OR ANY OF ITS AFFILIATES PLEDGE THE FEE PARCELS**
2 **AS COLLATERAL TO SECURE THE DEBT OF ITSELF OR ANY OTHER**
3 **ENTITY?**

4 A. No. MAUC was not a borrower and it never owned, pledged, or otherwise
5 encumbered the Fee Parcels. All of MAUC's utility assets, including the Fee
6 Parcels where utility assets are located, cannot be conveyed free and clear of
7 encumbrances without securing the release of the Judgment Liens as to the Fee
8 Parcels. In that regard, I want it to be clearly understood that the Fee Parcels were
9 never pledged by MADC or any other entity as collateral to secure the debts or
10 obligations of MADC or any other party. It was only by virtue of the judgment
11 entered in the Settlers Edge case against MADC and others, and in the other cases
12 cited in my Direct Testimony, that the seven Fee Parcels owned by MADC and the
13 one parcel owned by Banks Holding Company, L.P. became encumbered by the
14 Judgment Liens.

15 Suffice it to say, payments to be made from the \$950,000 purchase price to secure
16 release of the Judgment Liens as to the Fee Parcels will not satisfy the \$21,570,994
17 in Judgment Liens outstanding against MADC as of more than a year ago. The
18 remaining real estate owned by MADC and other judgment debtors will remain
19 subject to the balance of the Judgment Liens resulting from the outstanding
20 judgments against them.

21 **Q. PLEASE ADDRESS THE SUGGESTION THAT SOME EFFORT SHOULD**
22 **BE UNDERTAKEN BY SOME PARTY OR AGENCY OTHER THAN THE**
23 **POA TO DETERMINE THE VALIDITY OF THE JUDGMENT LIENS.**

24 A. I am not a lawyer, but I cannot imagine how that would work or could hope to be
25 accomplished, or who would fund such an effort. I see that the POA wants someone
26 else to fund and undertake such an effort.

1 The Judgment Lien resulting from the last judgment entered in Yancey County
2 Superior Court, File No. 10 CVS 279, was in the amount of \$5,982,478.24. I
3 understand that as of May 6, 2022, the principal, costs, and interest due on that
4 judgment alone totaled \$8,013,570.5.

5 That judgment arose from a suit filed by an MADC affiliate, Settler's Edge Holding
6 Company, LLC ("SEHC"), in Yancey County Superior Court, *Settlers Edge*
7 *Holding Co., LLC v. RES-NC Settlers Edge, LLC*, File No. 10 CVS 279, as a
8 consequence of the FDIC failing to honor the loan funding obligations of the failed
9 original lender, Integrity Bank. SEHC filed that suit seeking a declaratory ruling
10 against RES-NC Settler's Edge, LLC, the entity which stepped into the shoes of the
11 FDIC when it was assigned the FDIC's rights, title, and interest in the Development
12 Financing Agreement relating to Mountain Air. The FDIC's assignee
13 counterclaimed against SEHC and various related parties, including MADC. The
14 trial court ruled in 2013 and that ruling was appealed. In 2016 the Court of Appeals
15 remanded for further proceedings. Thereafter the case was fully litigated, with a
16 multi-day trial, resulting in the lender's assignee RES-NC Settler's Edge, LLC
17 being allowed to foreclose and obtain a judgment against the various parties it had
18 countersued, including MADC. Our counsel advises that the case is reported at 250
19 N.C. App. 645.

20 That case alone resulted in a judgment against MADC in the principal amount of
21 \$5,982,478.24.² As of May 6, 2022, the principal and interest due on the judgment

² The amounts shown as to this Judgment Lien in my Direct Testimony incorrectly reflected the \$12,929,216 judgment originally entered in favor of RES-NC Settlers Edge, LLC before its appeal. In the proceedings after the Court of Appeals' remand, the trial court entered a judgment in favor of RES-NC Settlers Edge, LLC in the amount of \$5,982,478.24.

1 alone totaled over \$8,000,000. That case was fully litigated and while I'm not a
2 lawyer, it is hard for me to imagine a path under which the legitimacy of the
3 Judgment Lien resulting from the outcome of that case alone, never mind the
4 Judgment Liens resulting from the three other cases, could be successfully
5 challenged.

6 **Q. DOES THAT CONCLUDE YOUR REBUTTAL TESTIMONY?**

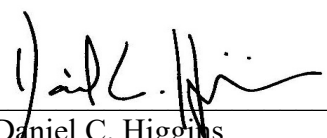
7 A. Yes, at this time. Given the limited opportunity to review the POA's late-field direct
8 testimony, if the Commission grants a further extension of time for the filing of
9 rebuttal testimony as to the POA's direct testimony, I reserve the right to file
10 additional testimony addressing such.

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document, has been served on all counsel of record for all parties in this docket, if any, and the Public Staff, by either depositing same in a depository of the United States Postal Service, first-class postage prepaid and mailed by the means specified below, or by electronic delivery.

This the 28th day of July, 2023.

BURNS, DAY & PRESNELL, P.A.



Daniel C. Higgins
Post Office Box 10867
Raleigh, NC 27605
Tel: (919) 782-1441
Email: dhiggins@bdppa.com
Attorneys for MAUC

Mountain Air

PROPERTY OWNERS ASSOCIATION, INC.

100 Club Drive, Suite 102
Burnsville, NC 28714

Mr. Daniel C. Higgins
Burns, Day & Presnell, P.A.
PO Box 10867
Raleigh, NC 27605

Dear Dan:

Attached is a resolution from the Board of Directors of the Mountain Air Property Owners Association in support of the sale of the Mountain Air Utilities Corporation (MAUC) to Utilities, Inc. The vote of the Board was unanimous and we are asking that the Public Staff move forward as expeditiously as possible to approve the sale.

The Board of Directors also wants to inform the Public Staff that on July 30, 2016, a Town Hall meeting was held for Mountain Air Residents to inform them of the status of current issues on the mountain. The first issue discussed at the meeting was the sale of MAUC. Included in the discussion was the fact that the sale would mean an \$18 to \$20 monthly increase in individual consumer costs for water and sewer beginning sometime in the first year after the sale. It was also noted that additional rate raises would probably occur in the near future. A verbal and show of hands vote was taken of the 120 or so residents in attendance and the result was 100% in favor of moving forward with the sale. Informal discussions with members who did not attend had the same result.

We request that the Public Staff, with the full support of the Mountain Air Property Owners Association, approve the sale of MAUC to Utilities, Inc. as

soon as possible. Should additional information be required please feel free to contact me.

Sincerely,



Albert G. Folcher, Jr.

CC: Mr. Martin J. Lashua, Utilities ,Inc PO Box 240908, Charlotte, NC 28224-0908

Mr. William Grantmyre, NC Utilities Commission –Public Staff, 43426 Mail Service Center, Raleigh NC 27699-4326

Mr. Randy Banks MAUC, PO Box 1037, Burnsville, NC 27699-4326



PROPERTY OWNERS ASSOCIATION, INC.

100 Club Drive, Suite 102

Burnsville, NC 28714

OFFICIAL COPY

JUL 28 2023

RESOLUTION OF MOUNTAIN AIR PROPERTY OWNERS ASSOCIATION, INC.

The undersigned, as Secretary of the Mountain Air Property Owners Association, (hereinafter referred to as the "Association"), a North Carolina Not For Profit Corporation, does hereby certify that on July 28, 2016 the following resolution was duly passed by the Board of Directors of the Association:

RESOLVED that:

1. The Association fully supports the sale of the water and sewer system at Mountain Air from Mountain Air Utility Corporation, as Seller, to Utilities, Inc., as Buyer, to include all assets of Mountain Air Utility Corporation and the transfer of all related real property used in connection of the operation of the utility in fee simple.

2. The Association fully understands and accepts that as part of the transaction, there will probably be a rate increase in the first year of approximately \$20.00 per month to insure the Buyer can cover initial costs to purchase and operate the system. Additional increases over time shall be based on actual costs to operate the system.

3. The Association further understands the utility rate for Mountain Air will be determined on a "stand alone" basis and that Utilities, Inc. can not apply for uniform rates for a period of ten (10) years from the date of closing of the transaction.

Printed Name: Karen Warshaw

Title: Secretary, Mountain Air Property Owners Association, Inc.

Memo

To: Catherine Heigel (catherine.heigel@bluegranitewaterco.com)
Michael Cartin (michael.cartin@bluegranitewaterco.com)

From: William Grantmyre

Copy: Public Staff - Chuck Junis, David Furr, Windley Henry, Megan Jost, Lindsay Darden

Date: April 15, 2019

Catherine and Michael:

As the Carolina Water Service, Inc. of North Carolina (Carolina Water) persons that worked on the possible acquisition of the Mountain Air water and wastewater utility systems the past several years are no longer with Carolina Water, to ensure you had the correct information, I am providing the terms which the Public Staff presented to Carolina Water and the Mountain Air POA several years ago.

Acquisition Adjustment: The Public Staff agreed that the Public Staff would recommend a positive acquisition adjustment for a \$950,000 purchase price to be included in rate base. The allocation between water and wastewater would be agreed upon with probably a greater percentage for water as there is bulk wastewater treatment by Burnsville.

Standalone Rates: Mountain Air would not be part of Carolina Water's uniform rates, and would have standalone rates indefinitely.

Mountain Air POA Approval: The Mountain Air POA membership must vote to approve the acquisition, the rate base treatment, and the Carolina Water to be approved rates. The Mountain Air POA passed an approval vote several years ago, but a current approval will be required including the Carolina Water service rates, based upon the current operating expenses, rate base, depreciation, return, etc.

Carolina Water Service Rates: The water and wastewater rates need to be calculated based upon current operating expenses, rate base, depreciation, return, etc.

Please call if you have questions or desire clarifications. I will be at the Charlotte conference on April 29, 2019.

The Public Staff provides this memo to ensure you had the correct information. The Public Staff does not encourage or discourage this acquisition.

Bill Grantmyre
Staff Attorney – Public Staff
Tel: 919-733-0977
email: william.grantmyre@psncuc.nc.gov



**NORTH CAROLINA
PUBLIC STAFF
UTILITIES COMMISSION**

October 11, 2022

Ms. A. Shonta Dunston, Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4300

Re: Docket No. W-354, Sub 384 – Application for Transfer of Public Utility Franchise and for Approval of Rates – Filed by Mountain Air Utilities Corporation (W-1148, Sub 22) and Carolina Water Service, Inc., of North Carolina (W-354, Sub 411)

Dear Ms. Dunston:

Attached for filing is a letter from the Mountain Air Property Owners Association to the Public Staff regarding the transfer of the Mountain Air Utilities Corporation to Carolina Water Service of North Carolina. The letter includes the resolution from the Board of Directors of the Mountain Air Property Owners Association, Inc., supporting the sale.

By copy of this letter, I am forwarding a copy to all parties of record by electronic delivery.

Sincerely,

Electronically submitted
s/John D. Little
Staff Attorney
john.little@psncuc.nc.gov

Attachments

Executive Director
(919) 733-2435

Accounting
(919) 733-4279

Consumer Services
(919) 733-9277

Economic Research
(919) 733-2267

Energy
(919) 733-2267

Legal
(919) 733-6110

Transportation
(919) 733-7766

Water/Telephone
(919) 733-5610

Mountain Air

Property Owners Association
100 Club Drive Suite 102
Burnsville, NC 28714
828-682-1578

~~July 28, 2022~~

Mr. Chuck Junis
NC Utilities Commission Public Staff
43426 Mail Service Center
Raleigh, NC 27699-4326

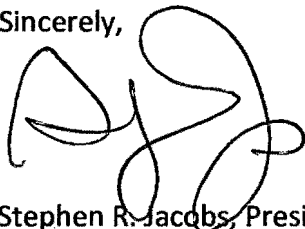
Dear Chuck,

Attached is a resolution for the Board of Directors of the Mountain Air Property Owners Association, Inc. in support of the sale of the Mountain Air Utilities Corporation (MAUC) to Carolina Water Service Inc. of NC. The vote of the Board was unanimous and we are asking that the Public Staff move forward as expeditiously as possible to approve the sale.

The Board of Directors also wants to inform the Public Staff that the sale of MAUC to a professional water operator has been discussed multiple times over the past four years with the residents of Mountain Air. The fact that Carolina Water Service Inc. of NC was appointed as Emergency Operator on May 10, 2021 and has operated as a replacement to MAUC has given the residents of Mountain Air a first-hand experience with Carolina Water.

We request that the Public Staff, with the full support of the Mountain Air Property Owners Association, Inc, approve the sale of MAUC to Carolina Water Service Inc. of NC as soon as possible. Should additional information be required please feel free to contact me.

Sincerely,



Stephen R. Jacobs, President

cc: Mr. Tony Konsul, Director, State Operations, Carolina Water Service Inc. of NC, PO Box 240908, Charlotte, NC 28224-0908

Mr. William Grantmyre, NC Utilities Commission-Public Staff, 43426 Mail Service Center, Raleigh, NC 27699-4326 ✓

Mr. Dan Higgins, Burns, Day & Presnell, P.A., PO Box 10867, Raleigh, NC 27605

Mr. Randy Banks (MAUC), PO Box 1037, Burnsville, NC 28714

Mountain Air

Property Owners Association
100 Club Drive Suite 102
Burnsville, NC 28714
828-682-1578

OFFICIAL COPY

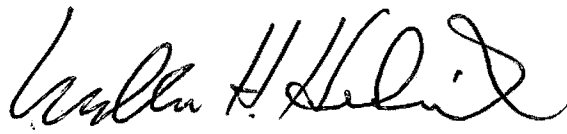
JUL 28 2023

RESOLUTION OF MOUNTAIN AIR PROPERTY OWNERS ASSOCIATION, INC.

The undersigned, as Secretary of the Mountain Air Property Owners Association, (hereinafter referred to as the "Association"), a North Carolina Not For Profit Corporation, does hereby certify that on July 28, 2022 the following resolution was duly passed by the Board of Directors of the Association:

RESOLVED that:

1. The Association fully supports the sale of the water and sewer system at Mountain Air from Mountain Air Utilities Corporation, as Seller, to Carolina Water Service Inc. of NC, as Buyer, to include all assets of Mountain Air Utilities Corporation and the transfer of all related real property used in connection of the operation of the utility in fee simple.



Printed Name: WILLIAM HEDRICK

Title: Secretary, Mountain Air Property Owners Association, Inc.