

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

Docket No. W-1300, Sub 69

Docket No. W-1305, Sub 29

In the Matter of

Joint Application by Pluris Hampstead, LLC)
5950 Berkshire Lane, Suite 800, Dallas,)
Texas, 75225, for Authority to Acquire the)
Sewer Utility Systems Serving Majestic Oaks)
and Hampstead Shopping Center, Southside)
Commons (formerly Grey Bull) Majestic)
Oaks West, and Salter's Haven at Lea Marina)
in Pender County, North Carolina, from Old)
North State Water Company, LLC, and)
Approval of Rates)

JOINT RESPONSE TO STATUS
REPORT AND MOTION TO STAY,
AND JOINT MOTION FOR
APPROVAL OF TRANSFER,
GRANT OF FRANCHISES, AND
APPROVAL OF RATES

NOW COME Old North State Water Company, LLC ("ONSWC") and Pluris Hampstead, LLC ("Pluris") (collectively "Joint Movants"), who respond to the unsolicited Status Report and Motion to Stay filed on December 9, 2021 by WLI Investments, LLC ("WLI"), and jointly move the North Carolina Utilities Commission ("Commission") for issuance of an Order approving the Application for Transfer of Public Utility Franchises and for Approval of Rates ("Transfer Application") filed jointly by ONSWC and Pluris on October 9, 2020 in these dockets.

Because WLI cannot establish any legitimate factual or legal basis for delaying approval of the transfer to Pluris of the ONSWC systems which are the subject of the Transfer Application in these dockets, the Commission should deny WLI's Motion to Stay and expeditiously approve the transfer of those systems to Pluris. WLI's claim and dispute regarding the Agreement dated December 13, 2018 ("WLI Agreement") between ONSWC and WLI relating to the Salter's Haven development and the Lea Tract, which is the Extended Service Area ("ESA") adjacent to the Salter's Haven development, present no

legitimate basis for delaying such approval, and the public interest will be well served by allowing Pluris to complete its acquisition of these systems as expeditiously as possible.

In further response to WLI's Motion to Stay and in support of their Motion for Approval of Transfer, the Joint Movants show the Commission the following:

BACKGROUND

1. On October 9, 2020, Pluris and ONSWC jointly filed the Transfer Application. That Application relates to the residential real estate developments commonly known as Majestic Oaks, Majestic Oaks West, Forest Sound (f/k/a Southside Commons and f/k/a Grey Bull) ("Forest Sound"), and Salter's Haven at Lea Marina, Phases 1 and 2 ("Salter's Haven Phases 1 and 2"), all of which are in Pender County, North Carolina.

2. ONSWC serves the Majestic Oaks development and the Hampstead Shopping Center (collectively "Majestic Oaks") pursuant to the Certificate of Public Convenience and Necessity ("CPCN") issued to it in Docket No. W-1300, Sub 0, as amended in Docket No. W-1300, Sub 3.

3. ONSWC serves the Majestic Oaks West development ("Majestic Oaks West") pursuant to ONSWC's Notification of Intention To Begin Operations In Area Contiguous To Present Service Area ("Notification of Contiguous Extension") and the Commission's Order Recognizing Contiguous Extension in Docket No. W-1300, Sub 30.

4. ONSWC serves the Salter's Haven Phases 1 and 2 pursuant to ONSWC's Notification of Contiguous Extension and the Commission's Order Recognizing Contiguous Extension in Docket No. W-1300, Sub 56.

5. ONSWC serves the Forest Sound development area pursuant to the CPCN issued to it in Docket No. W-1300, Sub 20.

6. Majestic Oaks, Majestic Oaks West, Salter's Haven Phases 1 and 2, and Forest Sound are collectively referred to hereinafter as the "Transfer Areas."

7. The Asset Purchase Agreement ("APA") between Pluris and ONSWC provides that Pluris will purchase from ONSWC certain specific wastewater utility assets that are or will be used to serve the properties in the Transfer Areas, and that ONSWC will retain certain assets and property. The APA was filed in the dockets on January 27, 2021.

8. On February 9, 2021, the Commission issued its Order Requiring Customer Notice ("Notice Order") in these dockets. In the Notice Order, the Commission concluded that the required Notice to Customers would inform ONSWC's customers in the Transfer Areas that the Commission may rule on the Transfer Application based on the filings and approve the franchise transfers, without scheduling a hearing, if no significant protests are filed with the Commission.

9. On February 19, 2021, Pluris filed its notarized Certificate of Service, documenting that the required Notice to Customers was mailed to all customers on February 18, 2021, as required by the Notice Order. On March 12, 2021, a single ONSWC customer, Mr. Jim Hutchinson, emailed the Public Staff pursuant to the Notice to Customers to "officially protest the rate increase for my sewer service in Majestic Oaks West, Hampstead NC." There is no proposed rate increase pending as to any of the Transfer Areas, including Majestic Oaks West, as Pluris has requested approval to continue charging the rates previously approved for ONSWC.

10. No other customer protest has been filed with the Commission relating to the Transfer Application in the eleven months since the Notice to Customers was

delivered to customers. Therefore, there is no significant protest by customers to the transfer of these service areas to Pluris.

WLI INTERVENTION

10. On March 8, 2021, WLI petitioned to intervene in these dockets based on its dispute as to certain terms in the WLI Agreement. A copy of the WLI Agreement was filed by ONSWC with its response to WLI's petition on March 23, 2021.¹ A copy of the WLI Agreement is attached hereto as **Exhibit A**. WLI was allowed to intervene in the dockets by Order issued on March 11, 2021.

11. WLI alleged in its Petition to Intervene that under the WLI Agreement, ONSWC contracted "to provide wastewater treatment service to a 338 single family residential development known as Salter's Haven ('Subdivision') at Lea Marina in Pender County **and to an additional 30 lots located outside of the Subdivision.**" (Petition to Intervene ¶ 4) (emphasis added). WLI's contractual dispute relates to the "additional 30 lots located outside of the Subdivision," which area is known as the "Lea Tract," and is defined in the WLI Agreement as the ESA. (WLI Agreement Section 1.12). Thus, WLI's dispute does not relate to an area included in the Salter's Haven development, as the Lea Tract is not currently included in ONSWC's approved service area.²

12. In its Motion to Stay, WLI concedes that the Lea Tract or ESA "includes 30 lots that are outside the current boundaries of the [Salter's Haven] Subdivision, but adjacent thereto." (WLI Motion for Stay, p. 3). The "additional 30 lots located outside of the Subdivision" is therefore a potential future development that could be the subject of a

¹ The WLI Agreement was originally filed with the Commission in Docket No. W-1300, Sub 56.

² WLI conceded this in its Petition to Intervene in this docket. (WLI Petition ¶ 11).

future notice of contiguous extension. However, the Lea Tract is not currently part of the Salter's Haven development, and it is thus not part of ONSWC's service area at this time. As relevant to these dockets and the Transfer Application, the "additional 30 lots located outside of the [Salter's Haven] Subdivision" are not part of the Transfer Areas that are the subject of the Transfer Application pending in these dockets.

13. The Notification of Intention to Begin Operations in Area Contiguous to Present Service Area filed by ONSWC in Docket No. W-1300, Sub 56 ("Notification") for the Salter's Haven at Lea Marina development, which was subsequently recognized by the Commission, covers only Phases 1 and 2 of the Salter's Haven development. Attached hereto as **Exhibit B** is the appendix to the Order Accepting and Approving Bond, Recognizing Contiguous Extension, and Approving Rates issued in that docket, reflecting that the relevant ONSWC service area recognized in that Order is "Salters Haven at Lea Marina Phases 1 and 2."

14. Likewise, the permit issued to WLI by the North Carolina Department of Environmental Quality's ("NCDEQ") Division of Water Resources, Water Quality Permitting Section (Permit No. WQ0040594, dated March 25, 2020, referred to as the "DEQ Permit"), authorizes construction and operation of a gravity wastewater collection system for a total of 277 residences in "Salters Haven, Phases 1 and 2." A copy of the DEQ Permit is attached hereto as **Exhibit C**.

15. The "additional 30 lots located outside of the [Salter's Haven] Subdivision," is not part of Salter's Haven Phases 1 and 2 and was not included in the Notification filed by ONSWC. Thus, no extension of ONSWC's service area to include the ESA has been recognized by the Commission. The ESA is also not covered by the DEQ Permit issued

for Salter's Haven Phases 1 and 2. ONSWC has received no formal request to provide service to the ESA, ONSWC is not authorized to provide service in that area, and NCDEQ has not issued a permit authorizing WLI to construct facilities in the ESA.

16. The WLI dispute concerns the rights and obligations of WLI under the WLI Agreement as to the type of the wastewater collection systems it is to construct in the ESA area outside the Salter's Haven development. The WLI Agreement obligates WLI to install wastewater collection infrastructure in Salter's Haven Phases 1 and 2. WLI apparently separately agreed with the owner of the ESA tract that it would install the wastewater collection infrastructure for that tract as well. WLI's principal claim in its Motion to Stay is that it is entitled to install a low-pressure wastewater collection system with grinder pump stations in the ESA area. ONSWC disputes WLI's interpretation of the WLI Agreement.³

17. Pluris agrees with ONSWC's reading of the WLI Agreement. In addition, Pluris opposes the use of low-pressure systems and grinder pumps for several reasons. First, low-pressure systems require that each residence attached to such a system has a grinder pump station. Pluris' experience is that customers living in residences served by grinder pumps will routinely call their wastewater utility service provider when there is a problem with their grinder pump station, even though homeowners typically own the grinder pumps at their residences and are financially responsible for maintaining, repairing, and replacing them. Those calls not only tie up utility service personnel, but the customer is often surprised and usually unhappy to discover that they own and are

³ See Letters from ONSWC's counsel filed with the Commission in these dockets on March 23, 2021 and April 19, 2021.

responsible for the grinder pumps, and they often project that unhappiness onto utility personnel who are forced to endure and deal with those situations.

Second, Pluris knows from experience with other systems it has acquired that grinder pumps cause operational issues and problems with items that are, unfortunately, flushed down toilets (e.g., “flushable” wipes (which are not actually disposable), feminine hygiene products, etc.), that are not a problem in gravity flow systems.⁴ In addition, items that are sometimes flushed (e.g., Barbie dolls), that get stuck in a grinder pump’s cutting teeth, causing damage to the unit, leading to service calls, customer dissatisfaction, etc. Due to the extent of operational issues and problems associated with low-pressure systems, Pluris does not enter into new development agreements with developers which provide for installation of such systems, where a gravity system with lift station(s) can be utilized to deliver wastewater to a treatment facility. Finally, it is possible to construct a gravity flow in-tract collection pipeline and a single lift station for connecting the Lea Tract onto a force main sending wastewater from that tract to Pluris for treatment. Installation of a low-pressure collection system (rather than a gravity collection system) in the Lea Tract would allow WLI to save money on the cost of installing the collection system, but in practical terms would mean that there would be 30 individual lift stations, one at each residence.

18. The Joint Movants are informed and believe that as a matter of policy the Public Staff opposes the installation of systems using grinder pumps, such as the low-pressure collection system that WLI seeks to install in the Lea Tract, because individual homeowners are saddled with the cost responsibility for owning, maintaining, and

⁴ The wastewater treatment problems created by “flushable” wipes is such that they have become the subject of a number of legal proceedings, one example of which is *Commissioners of Public Works of the City of Charleston d.b.a. Charleston Water System v. Costco Wholesale Corporation et al.*, Case No. 2:21-cv-00042-RMG (USDC – D. S. C.).

replacing grinder pumps (which currently cost approximately \$4,000 to \$5000 to replace, including materials and labor).

19. In WLI's Motion to Stay in these dockets, and in pleadings it recently filed in other related dockets,⁵ WLI seeks to delay approval of the transfer of these systems to Pluris by any means possible. These actions were apparently taken by WLI in an effort to obtain concessions from ONSWC and/or Pluris so that WLI could install a low-pressure collection system in the Lea Tract, and thereby avoid the higher cost of installing a gravity system. The Joint Movants believe that WLI seeks to install the cheapest possible wastewater collection system in the Lea Tract, and thereby burden the future ratepayers on those 30 lots with the cost of owning, maintaining, and replacing the grinder pump stations that each residence connected to a low-pressure system must have.

PUBLIC CONVENIENCE AND NECESSITY

20. WLI claims that under the disputed circumstances it depicts, the public convenience and necessity will be best served by delaying approval of the transfers of these systems and assets to Pluris. In fact, the public interest and the public convenience and necessity will best be served by prompt approval of the Transfer Application.

21. As the Commission knows from prior proceedings in these dockets, due to environmental compliance issues at ONSWC's Majestic Oaks wastewater treatment plant ("Majestic Oaks WWTP"), the Commission authorized Pluris to provide bulk

⁵ See *In the Matter of Complaint and Petition for Declaratory Ruling of WLI Investments, LLC vs. Pluris Hampstead, LLC and ONSWC*, Dockets W-1305, Sub 35 and W-1300, Sub 77; and WLI Petition to Intervene and Motion for Reconsideration in *In the Matter of In the Matter of Notification by Old North State Water Company, LLC, 4700 Homewood Court, Suite 108, Raleigh, NC 27609, of Intention to Begin Operations in Contiguous Service Area to Provide Sewer Utility Service in Salter's Haven at Lea Marina Subdivision in Pender County, North Carolina*, Docket No. W-1300, Sub 56.

wastewater treatment service to ONSWC by installing a new lift station and pumping all of the wastewater from the Transfer Areas to Pluris' advanced membrane bio-reactor ("MBR") plant in Hampstead for treatment. Jim Gregson, former Deputy Director of NCDEQ's Water Quality Division, has previously testified to the Commission under cross-examination by William Grantmyre of the Public Staff that Pluris' MBR plants produce "drinking water quality effluent."⁶

22. Despite WLI's claims that justice can only be served by delaying approval of the transfers, there is no legitimate factual or legal basis for WLI's Motion to Stay or its claim that the transfer of these systems to Pluris is not in the public interest. Pluris is in good standing with the Commission, which recently recognized that the service provided by Pluris is adequate, efficient, and reasonable.⁷ In addition, Pluris' affiliate, Pluris Webb Creek, LLC, was appointed as an Emergency Operator of the troubled Webb Creek by the Commission, and served in that capacity for three years.⁸ Given the situation with ONSWC's Majestic Oaks WWTP, approval of the transfer of these systems to Pluris will allow ONSWC to decommission the Majestic Oaks WWTP, remove all ponds associated with the WWTP, which will be a tremendous benefit to the residents of Majestic Oaks. The various uncertainties alleged by WLI in its Motion to Stay present no legitimate basis for delaying approval of the transfer of the subject service areas and utility assets to Pluris. Suffice it to say that the public convenience

⁶ *In the matter of Application of Pluris Webb Creek, LLC for a Certificate of Public Convenience and Necessity to Provide Sewer Utility Service in the Areas Presently Served by Webb Creek Water and Sewage, Inc. in Onslow County.* Docket No. W-1314, Sub 1. Transcript, January 8, 2018, p. 34, lines 17-21.

⁷ *Order Approving Stipulation of Settlement, Granting Partial Rate Increase, And Requiring Customer Notice*, docket W-1305, Sub 12, November 13, 2020, p. 11.

⁸ *In the matter of Webb Creek Water and Sewage, Inc. – Petition for Appointment of Emergency Operator*, Docket W-864, Sub 11.

and necessity, given the compliance issues associated with ONSWC's existing Majestic Oaks WWTP, is far better served by allowing Pluris to acquire these systems and permanently connect the Transfer Areas to its advanced MBR plant in Hampstead. More to the point, WLI's request for a stay simply does not warrant delaying approval of the transfer of these systems to Pluris.

23. WLI's claim that it is entitled to install a low-pressure collection system in the Lea Tract, which it concedes is not part of the Salter's Haven subdivision, presents no legitimate basis for delaying approval of the transfer of the subject ONSWC systems to Pluris. In fact, given the compliance issues associated with ONSWC's Majestic Oaks WWTP, as reflected in the filing and order approving Pluris' provision of bulk service to ONSWC, expedited approval of the transfers is in the public interest.

If, however, the Commission concludes that it is the appropriate forum for resolving the contractual dispute that WLI now presents, then it can resolve those issues in a future proceeding in the complaint docket recently initiated by WLI.⁹ Resolution of WLI's claims regarding the terms of its contract with ONSWC has no bearing on the fitness of Pluris to acquire the systems in the Transfer Areas which are the subject of the Transfer Application pending in these dockets. Further, if the Commission chooses to decide this dispute and rules that WLI is contractually entitled to avoid the cost of installing a gravity system to serve the Lea Tract, then Pluris, as successor to ONSWC, will have to abide by that ruling. To that end, in approving the Transfer Application and issuing an Order approving the transfers, the Commission can reserve those issues for

⁹ *In the matter of WLI Investments, LLC Complaint Against Pluris Hampstead, LLC and Old North State Water Company, LLC*, Dockets W-1305, Sub 35 and W-1300, Sub 77.

future resolution. In no event is the public interest served by delaying the transfer of ownership and operation of these systems to Pluris.

Pluris has not refused to cooperate with WLI for purposes of its efforts to obtain permits it needs from NCDEQ for the Lea Tract. At present, ONSWC—not Pluris—is the certificated service provider for the Salter’s Haven Phases 1 and 2 service area, and thus Pluris is not the utility that could execute such permits. The Joint Movants strongly deny that Pluris “controls” ONSWC. Pluris has told ONSWC that it agrees with its interpretation of the pertinent provisions of the WLI Agreement. Pluris has also told ONSWC that it does not favor low-pressure collection systems and will not enter into new development agreement providing for installation of such systems, due to the issues and problems described above, where a gravity system with lift station(s) can be utilized to deliver wastewater to a treatment facility.

24. The transfer of the wastewater collection system for Salter’s Haven Phases 1 and 2 to Pluris does not in any way affect WLI’s rights under the WLI Agreement. WLI’s dispute presents a legal contract interpretation issue that is outside the scope of the Transfer Application and which would be more efficiently addressed in a separate proceeding.

25. WLI also alleges in its Motion to Stay that “it was contemplated that the wastewater services would be provided through an ONSWC facility known as the Majestic Oaks Wastewater facility,” that there are “anticipated capacity issues associated with the Majestic Oaks system,” and that “ONSWC has made no effort to upgrade the Majestic Oaks system as it committed to do, resulting in considerable risks to Petitioner and the residents of the Subdivision.”¹⁰ (WLI Petition ¶ 10).

¹⁰ The term “Subdivision” is defined in the Agreement between ONSWC and WLI as “a residential subdivision comprised of approximately 338 single-family residences to be known as the Salter’s Haven at

As noted above, the Commission is aware that due to the environmental regulatory compliance issues with ONSWC's Majestic Oaks WWTP, which had been serving all of the Transfer Areas, ONSWC filed a Motion to Allow Bulk Wastewater Treatment on March 17, 2021. There is no legitimate issue as to the adequacy of treatment capacity at Pluris' advanced MBR plant in Hampstead. There is also no reasonable basis for WLI's expressed lack of confidence in the ability of Pluris to perform and provide service to the Salter's Haven development and the Lea Tract, as Pluris is already treating the wastewater from all of the Transfer Areas at its Hampstead MBR plant, and is in the process of doubling the treatment capacity of that plant to 500,000 gpd. Any legitimate concern that WLI might have had regarding capacity for environmentally compliant treatment of wastewater from Salter's Haven Phases 1 and 2 has been rendered moot by Pluris' provision of bulk service and will be permanently addressed by Pluris' acquisition of the Transfer Areas.

26. Under the APA, ONSWC will retain ownership of the Majestic Oaks WWTP, the land where the Majestic Oaks WWTP is located (except for the 50' x 50' lift station tract and easements for utility facilities to be conveyed to Pluris), all adjacent structures, and all ponds associated with the Majestic Oaks WWTP and its operation located on land owned by ONSWC, including upset ponds, high rate infiltration ponds, and other ponds. Under the APA, ONSWC is responsible for decommissioning the Majestic Oaks WWTP and the site where it is located, as well as all associated ponds, basins, and property.

Lea Marina ("Subdivision") on certain lands located off Factory Road, in Pender County, North Carolina, as shown on that certain map by Paramounte Engineering entitled 'Lot Typology Exhibit, Salters Haven at Lea Marina' attached hereto as Exhibit 1."

27. As requested by the Majestic Oaks Property Owners Association and the Public Staff, ONSWC has agreed that its decommissioning of the Majestic Oaks WWTP will include (i) removal of the Majestic Oaks WWTP; (ii) removal of all fences, and (iii) leveling and placing seed with straw cover over the two ponds on the Majestic Oaks WWTP site. Also, for the infiltration pond located on Majestic Oaks Drive on land owned by the Majestic Oaks Property Owners Association, ONSWC has agreed that the decommissioning will include: (i) the total removal of the fence around the existing infiltration pond; (ii) the removal of the dam or pond walls; (iii) leveling the pond site; (iv) creation of positive drainage to the easterly ditch; and (v) placing seed with straw cover over the infiltration pond site. ONSWC's decommissioning actions will yield significant public benefit, particularly to the approximately 200 residents of Majestic Oaks.

28. In the event that the Commission concludes that it requires further information as to the effect of the transfer described in the Transfer Application on WLI, the Joint Movants would request that the Commission either schedule oral argument or require written comments from the parties as to whether any further proceedings before the Commission are necessary, given that the ESA is not included in the Transfer Areas. If it chooses to do so, the Commission can schedule any further proceedings it deems appropriate at such time as WLI seeks to construct facilities in the ESA.

Wherefore, the Joint Movants request that the Commission issue an Order:

1. Denying the stay requested by WLI;
2. Approving the transfer of ONSWC's public utility franchises relating to the Transfer Areas, and the utility assets covered by the APA, to Pluris;

3. Stating that if the Commission determines that further proceedings before the Commission are appropriate as to WLI's dispute as to interpretation of the WLI Agreement, the Commission will schedule further proceedings at a future date when service is requested in the ESA, if the dispute is not resolved by the parties; and
4. Granting the Joint Movants such other and further relief as the Commission deems just and proper.

Respectfully submitted, this the 18th day of January, 2022.

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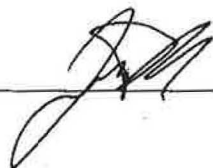
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VERIFICATION

John McDonald, personally appearing before me and first being duly sworn, deposes and says that he is Managing Member of Old North State Water Company, LLC, that he has read the foregoing Joint Motion and the matters set forth therein are true of his own knowledge, except as to those matters and things therein alleged upon information and belief, which he believes to be true.

This the 19th day of January, 2022.



Sworn to and subscribed before me,
this the 18th day of January, 2022.



Notary Public

My Commission expires:

LAURIE P. WALLS
Notary Public, Alabama State At Large
My Commission Expires Dec. 11, 2022

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 these dockets 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 18th day of January, 2022.

FOX ROTHSCHILD LLP

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