

4. The North Carolina Public Utilities Act, N.C. Gen. Stat. § 62-1 *et seq.*, defines public utility to include a person or entity:

diverting developing , pumping, impounding, distributing or furnishing water to or for the public for compensation, or operating a public sewerage system for compensation; provided however that the term public utility shall not include any person or company whose sole operation consists of selling water to less than 15 residential customers....
(Emphasis added). N.C. Gen. Stat. § 62-3(23)a.2.
5. Carolina Village MHP LP (“Carolina Village”) is the owner of a mobile home park in Currituck County North Carolina and has pending before the Commission an application for a reseller certificate.
6. Carolina Village has in or around 149 tenants receiving its services with facilities and approvals necessary to support 189 tenants.
7. Pursuant to NC Gen. Stat. § 62-110(g) Carolina Village is seeking to provide water and sewage services to its tenants as a reseller. Pending obtaining approval of its reseller petition, Carolina Village has not charged tenants for water and sewer service. As a reseller Carolina Village will not receive a certificate of public convenience and necessity as a water or wastewater public utility as that term is defined by the Public Utilities Act, N.C. Gen. Stat. § 62-3(23)d. Other than operation as a reseller, Carolina Village’s operation of its water distribution and sewage collection systems is not subject to regulation by this Commission.
8. Carolina Village operates and maintains the lines from CWS’s mains to the tenants. CWS provides water service in bulk from wells through multiple connections at no charge. Wastewater generated by the Carolina Village is currently treated at a wastewater system owned by CWS through a bulk service arrangement at no charge. Carolina Village sends up to approximately 12,000 GPD of wastewater to CWS for treatment.
9. Carolina Village communicated with CWS representatives regarding its situation and need for a stable long term source of bulk water and wastewater treatment service. These conversations led to the formation of an agreement with Carolina Village under which CWS will provide wholesale bulk water and wastewater treatment services

initially in the amount of 60,000 GPD with the ability without provisions for expansion of capacity.

10. CWS is willing to provide Carolina with bulk water service from wells and wastewater treatment service from the wastewater treatment facility it acquired from Equity First NC, LLC and CV-WWT, LLC in February 2022. Carolina Village and CWS have agreed on the terms of a bulk service agreement under which CWS would provide wholesale bulk water and wastewater treatment to Carolina Village, subject to certain conditions precedent, including CWS's securing the ruling from the Commission requested herein.
11. In connection with its proposed provision of bulk water and wastewater treatment to Carolina Village, CWS would not be operating a public water/sewerage system for compensation as CWS will not be operating a water or sewerage system that provides service to the public, services are provided to a single entity.
12. As providing the proposed service to Carolina Village, who in turn provides services to the individual tenants, CWS would provide water to Carolina Village through multiple connections points (one meter for each tenant) and collect wastewater through multiple connection points (one clean out for each tenant). CWS's provision of bulk water and wastewater treatment to Carolina Village through the systems operated by CWS would not constitute providing services to the public, as service to the individual tenants remains with Carolina Village MHP. In this way the water and sewer system is analogous to a facility serving a multifamily complex with individual services for each unit or tenant. The lines within the complex remain with a single owner with services being provided to multiple tenants by that owner.
13. CWS will not be providing service to the public. CWS will have no dealings with Carolina Village's end user water/sewer customers. As provided in Exhibit B, CWS will bill Carolina Village on a monthly basis for bulk water and wastewater treatment service provided pursuant to the agreement between CWS and Carolina Village. Carolina Village will bill its customers for water/sewage services provided by Carolina Village as a reseller. CWS will act solely as wholesale supplier of bulk water and wastewater treatment to Carolina Village. CWS will produce the water and treat the wastewater

delivered to it by Carolina Village, and CWS will not deal directly with or provide any service to the Carolina Village's customers. CWS will not bill the Carolina Village customers and it will have no contact, communications or direct dealings with the Carolina Village customers.

14. As a conditions precedent to CWS's proposed provision of bulk water and wastewater treatment to Carolina Village CWS 's responsibility and obligations under its agreement with Carolina Village is subject to and contingent upon CWS securing a ruling from the NCUC, satisfactory in form and substance to CWS in its sole discretion, that the activities of CWS as contemplated in the agreement will not cause CWS to be a public utility as that term is defined in N.C. Gen. Stat. § 62(23) or subject to regulation by the NCUC. Absent such a ruling by the Commission, CWS will not be able to provide the services requested by Carolina Village when Carolina Village receives its reseller authorization.
15. CWS's provision of bulk service arrangements requested by Carolina Village will benefit Carolina Village and its tenants in various ways, including the following: First, Carolina Village will secure a long term stable source of bulk water and wastewater treatment with the pricing established in advance for the terms of the agreement. Second, Carolina Village will be spared the capital investment necessary to construct its own water and wastewater treatment plant and facilities. Third, Carolina Village will be spared the cost of employing personnel as necessary to operate a water supply and wastewater treatment plant. Fourth, as growth and development opportunities come to Carolina Village, the lack of additional water and wastewater treatment capacity would limit Carolina Village's efforts to accommodate potential growth. The restrictions of future growth will be severely limit Carolina Village's ability to expand its development. With the initial capacity, which CWS is willing to provide on a bulk service basis, together with CWS's willingness to expand the treatment capacity as needed, Carolina Village will be able to accommodate future growth.
16. As shown by the letter from the Carolina Village's owner attached as Exhibit C, Carolina Village supports CWS's request to the Commission. This letter reflects the benefits of

the proposed arrangement to Carolina Village, and asks that the Commission grant CWS's request for a declaratory ruling.

17. CWS proposes to provide bulk water supply wastewater treatment to Carolina Village, and under the arrangement now proposed, CWS would not be serving the public, instead it would be providing bulk service to an only partially regulated reseller which would continue to set the rates pursuant to Commission requirements for resellers, under terms and conditions on which it provides water/sewerage service to its tenants. Because CWS would not be providing service to the public, and because it would not be operating a public water/sewerage system, and because of the public benefit which will result from the requested ruling, the Commission should grant the declaratory ruling requested by CWS.
18. In a number of prior dockets, the Commission has been requested to issue declaratory rulings with regard to various ventures which proposed to provide some type of potential public utility commodity or service, typically to a single customer or a very small number of customers. These cases have involved various scenarios and commodities, including resale of excess fiber optic capacity, the sale of steam or landfill gas, and the provision of bulk wastewater treatment service to a municipality. While the facts and circumstances presented in those dockets have varied from case to case, in issuing rulings declaring the various proposed ventures would not to be public utilities by virtue of their proposed activities, the Commission has generally relied upon the flexible definition of public as set forth in *State ex rel. Utilities Commission v Simpson*, 295 N.C. 519, 246 S.E.2d 753 (1978). In that regard the Commission has generally found under the specific circumstances presented in each such docket, that provision of the proposed commodity or service to a single "customer" would not cause the particular venture involved to be deemed a public utility. In *Simpson* our Supreme Court made clear that the public utility laws must be interpreted not in an abstract, formalistic manner but rather with a view toward the regulatory circumstances of each case. The meaning of public must in the final analysis be such as will, in the context of the

regulatory circumstances, and as already noted by the Court of Appeals, accomplish the legislatures purpose and comports with its public policy . 295 N.C. at 524.

19. For example, in a docket presenting facts and circumstances similar to those presented here, *In the Matter of Request for Declaratory Ruling of Pharr Yarns, LLC*, Docket No. W - 1260, Sub 0, the Commission granted the request of Pharr Yarns and issued a declaratory ruling that Pharr's provision of bulk wastewater treatment service to the Town of McAdenville would not cause Pharr to be a public utility. *Order on Petition for Declaratory Ruling* (November 22, 2005). In that docket, the Town of McAdenville anticipated that it would run out of sewer capacity in the next two years, and Pharr had excess wastewater treatment capacity available. Those parties had agreed that Pharr would provide McAdenville with bulk wastewater treatment service for up to 300,000 gallons per day on terms negotiated by the parties. Similar to CWS in the instance scenario, Pharr was willing to provide bulk service to a municipality so long as doing so would not cause it to be treated as a public utility subject to the regulation by the Commission.
20. The Commission reached the same conclusion in *In re: Request for Declaratory Ruling by SIG Marshville, LLC*, Docket No. W-1338, Sub 0 (December 15, 2021) and ruled that the petitioner's provision of bulk wastewater service to the Town of Marshville would not cause the petitioner to be a public utility. Likewise, the Commission in *In the Matter of Petition for Declaratory Ruling by JUSA Utilities Bridgeton, Ltd, ("JUSA")*, Docket No. W-1290, Sub 0, ruled that construction of a wastewater treatment plant by JUSA Utilities Bridgeton for the purpose of providing bulk wastewater treatment service to the Town of Bridgeton, and provision of bulk wastewater treatment service, would not cause JUSA to be a public utility. *Order on Petition for Declaratory Ruling*, Docket No. W-1260, Sub 0 (April 27, 2010).
21. In its orders granting the request to Pharr and JUSA in their respective dockets, the Commission recognized various dockets in which it previously ruled that the provision of a commodity or service to a single customer under the various scenarios would not cause the provider to be a public utility, See, e.g., *Request for Declaratory Ruling by*

Natural Power, Inc, and Raleigh Landfill Gas Corp, Docket No. SP-100, Sub 1 (December 22, 1988); *Request for Declaratory Ruling by Fayetteville Gas Company , LLC*. Docket No. SP-100, Sub 6 (May 24, 1996); *Request for Declaratory Ruling by Wake Landfill Gas Company, LLC, et al.*, Docket No. SP-100, Sub 9 (July 31, 1996); *Request for Declaratory Ruling by N.C. Municipal Landfill Gas Co LLC*, Docket No. SP-100, Sub 10 (October 30, 1996); *Request for Declaratory Ruling by Asheville Landfill Gas LLC*, Docket No. SP-100, Sub 12 February 23, 1996; *Request for Declaratory Ruling by Pitt Landfill Gas, LLC*, Docket No. SP-100, Sub 13 (March 19, 1997).

22. In its order on Petition for Declaratory Ruling in the Pharr and JUSA dockets the Commission concluded that Pharr and JUSA would not be considered public utilities by virtue of the activities described in their petitions in their respective dockets. Pharr Oder page 2; JDUSA Order, page 3. That same conclusion and result is appropriate here, where the actual underlying provider of water/sewage service to the public, Carolina Village, is a reseller and not a fully regulated public utility. It would be illogical for the Commission to conclude that a wholesale provision of bulk treatment to a single only semi-utility entity such as a reseller, would cause the bulk treatment service provider to be deemed a public utility, when it was providing bulk treatment service to a single entity which is itself only partially regulated. Such a result would be akin to declaring that an entity that provides coal to a municipality to fuel its municipality-owned coal-fired electric generating plant was a public utility.
23. Other examples of declaratory rulings by entities in particular ventures would not be public utilities can be found in a line of dockets involving the provision of landfill gas or steam. For example in *In Re: Request for Declaratory Ruling by Natural Power Inc and Raleigh Landfill Gas Corp*, NCUC Docket No. SP-100, Sub 1 (December 22, 1988), the Commission concluded that the use of landfill gas to produce process steam for sale to a single manufacturer under a bargained for transaction did not bring the entity collecting and selling the landfill gas within the definition of a public utility set forth in N.C. Gen. Stat. § 62-3(23)a. There the landfill gas was to be collected by Raleigh Landfill Gas Corporation and sold to Natural Power, which would burn the gas to produce steam for

sale to a manufacturer. The Commission ruled that collecting and combusting landfill gas to create steam or sell to a single user did not render either Raleigh Landfill Gas or National Power a utility under the Public Utilities Act.

24. In its subsequent decision in *In Re: Request for Declaratory Ruling by Fayetteville Gas Company, LLC*, NCUC Docket No.SP-100, Sub 6 (May 24, 1996), the Commission considered the question of whether the direct sale of landfill gas to an industrial user would cause the landfilled gas seller to be a public utility. Under the facts presented there the Commission ruled that Fayetteville Landfill Gas would not be a public utility.
25. Following Fayetteville Landfill Gas the Commission ruled in a number of other dockets that the applicants' proposed sale of landfill gas would not cause them to be public utilities. See, e.g., *In Re: Request for Declaratory Ruling by Wake Landfill Gas Company, LLC, et al.*, NCUC Docket No. SP-100, Sub 9 (July 31, 1996); *In Re: Request for Declaratory ruling by N.C. Municipal Landfill Gas Co., LLC, et al.*, NCUC Docket No. SP-100, Sub 10 (October 30, 1996); *In Re: Request for Declaratory Ruling by Asheville Landfill Gas, LLC*, NCUC Docket No. SP-100, Sub 12 (April 8, 1997), and *In Re: Request for Declaratory Ruling by Pitt Landfill Gas, LLC*, NCUC Docket No. SP-100, Sub 13 (March 19, 1997).
26. In subsequent proceedings in *In Re: Request for Declaratory Ruling by N. C. Municipal Landfill Gas Co, LLC, et al.*, NCUC Docket No. SP-100, Sub 18 (August 16), the Commission ruled that N. C. Municipal Landfill Gas Company's sale of landfill gas to up to three commercial users would not cause it to be a public utility. That result was in accord with a prior Commission ruling that a sale of another regulated commodity, steam, up to five users would not cause the seller to be selling steam to the public. *In Re: Application for Certification of Public Convenience and Necessity and Request for Declaratory Ruling by Westmoreland-LG&F Partners*, NCUC Docket No. SP-77 and SP-100, Sub 2 (October 13, 1993).
27. In *State ex rel. Utilities Commission v. Simpson, supra*, the North Carolina Supreme Court adopted a flexible definition of the public under the Public Utilities Act. In many previous dockets the Commission has noted that the determination of public utility status must be made in each case based on the particular facts and the circumstances

presented. Under the circumstances now presented, CWS's proposal to provide wholesale bulk wastewater treatment to Carolina Village would comport with prior Commission decisions that a specific proposed activities would not cause a particular venture to be a public utility. CWS's request, like the prior requests as cited above, satisfies the criteria set forth in *Simpson* and previously recognized by the Commission in ruling on request for declaratory rulings, and the Commission should grant CWS's request for such a ruling.

28. In order for it to undertake the provision of bulk service to Carolina Village CWS requires a determination that such service would not cause CWS to be deemed a public utility. Thus, for this project to succeed it is necessary that CWS, by virtue of its provision of bulk treatment service Carolina Village, not be subject to being deemed a public utility.

WHEREFORE, CWS requests that the Commission issue a declaratory ruling that its proposed operations as described herein (1) will not cause it to be a public utility within the meaning of N. C. Gen. Stat. § 62-3(23)a; (2) will not cause it to be operating a public water/sewage system for compensation; and (3) will not cause it to be a utility as defined in Commission Rule R10-2(a) or otherwise subject to regulation by the Commission.

Respectfully submitted, this the ___ day of June, 2023

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