

DOCKET NO. W-218, SUB 497

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application by Aqua North Carolina, Inc.,) PUBLIC STAFF LATE FILED
202 MacKenan Court, Cary, North) EXHIBIT RELATING TO
Carolina 27511, for Authority to Adjust) THE FLOWERS PLANTATION
and Increase Rates for Water and Sewer) CONTRIBUTIONS IN AID OF
Utility Service in All Service Areas in) CONSTRUCTION ISSUES
North Carolina)

NOW COMES the Public Staff – North Carolina Utilities Commission (Public Staff) and files this Late Filed Exhibit in response to the requests of Commissioner Clodfelter and Chairman Finley at the September 25, 2018, evidentiary hearing relating to the wastewater contribution in aid of construction (CIAC) issues at Flowers Plantation Sections I, II, and III-B, and the Bulk Wastewater Service Agreement for Flowers Plantation Sections I, II, and III-B, dated May 14, 2002, between Johnston County (County), Rebecca Flowers, d/b/a River Dell Company (Rebecca Flowers), and Heater Utilities, Inc. (Heater) (Bulk WW Agreement).

The requests by Commissioner Clodfelter and Chairman Finley for late filed exhibits were for:

1. Was the Bulk WW Agreement filed with the Commission for the contract's approval and in what context?

Tr. Vol. 16 page 37, lines 11 - 13 - Chairman Finley

Tr. Vol. 16 page 38, lines 2 – 8 – Commissioner Clodfelter

2. To what extent was the requirement for Heater to recover 50% of the Buffalo Creek Pump Station and Force Main costs equally from the first 2,000

single family equivalents, picked up in secondary developers contracts that were submitted to and approved by the Commission.

Tr. Vol. 16 page 71, lines 12 – 24, and page 72 lines 1 – 8 – Commissioner Clodfelter and Chairman Finley

3. To what extent was the requirement for Heater to collect from the developer a wastewater capacity fee in the same amount then currently being charged by County for bulk wastewater treatment, picked up in any certificate or contiguous extension contract filed with and approved by the Commission? Was the contract submitted in a rate case or was the contract submitted to the Commission, and did the Commission actually rule on any of the provisions of the contract?

Tr. Vol. 16, page 72, lines 19 – 24, and page 73, lines 1 – 7 – Chairman Finley

1. Was the Bulk WW Agreement filed with the Commission for the Bulk WW Agreement's approval and in what context?

Yes, the Bulk WW Agreement was filed with the Commission and was approved by the Commission in Docket No. W-274, Sub 392, Order dated March 24, 2003. The Application filed with the Commission requested a wastewater utility certificate of public convenience and necessity (Certificate) for the River Dell Elementary School in Flowers Plantation, located on the Buffalo Creek side, Sections I, II and III-B, Johnson County.

The Commission's Order on page one states:

"Heater is acquiring the sewer utility system under a contract dated May 14, 2002, between Heater, Johnston County, and the developer, Rebecca Flowers, d/b/a River Dell Company. There is no purchase price for the sewer system. The Public Staff has recommended the contract be approved."

Ordering Paragraph 5 states

"That Heater's agreement with Johnston County and the developer, Rebecca Flowers, d/b/a River Dell Company, is hereby approved"

Note: The Public Staff did review every one of the Heater and later Aqua North Carolina's Certificate applications and notifications of contiguous extension filed with the Commission subsequent to May 14, 2002. The Public Staff did not find a Certificate application or notification of contiguous extension where the Bulk WW Agreement was filed subsequent to Docket No. W-274, Sub 392.

2. To what extent was the requirement for Heater to recover 50% of the Buffalo Creek Pump Station and Force Main costs equally from the first 2,000 single family equivalents, picked up in secondary developer's contracts that were submitted to and approved by the Commission?

In Docket No. W-274, Sub 538, which was a notification of contiguous extension at Flowers Plantation, the Commission approved in Order dated April 6, 2006, the Amended Purchase Agreement for Flowers Plantation between Sections I, II, and III-B. River Dell Utilities, Inc., Rebecca Flowers and Heater (Amended Purchase Agreement), dated May 14, 2002, filed with the Commission on February 7, 2006, and also the contract with the developer Walker Woods Development, LLC.

The Commission, in ordering Paragraph 5, stated:

- “5. That Heater’s agreements with developer, Walker Woods Development, LLC, and the developer, River Dell Utilities, Inc. and River Dell Company, are hereby approved.”

The following are key provisions of this Commission approved Amended Purchase Agreement.

Paragraph 4.A. on page 7 which states:

- “4. RIVER DELL’S OPTION TO DEVELOP TRACTS AND/OR SELL TRACTS TO SECONDARY DEVELOPERS
A. River Dell to Sell Tracts to Secondary Developers
River Dell shall have the right at River Dell’s sole option to develop the various tracts of land in Flowers Plantation or sell the various tracts to other developers, hereinafter referred to as “Secondary Developers.” If a tract of land is sold by River Dell to a Secondary Developer, then that Secondary Developer shall assume all of River Dell’s rights and obligations under this Amended Agreement with respect to the installation of the water and wastewater utility systems to serve that tract of land. If River Dell develops a tract of Flowers Plantation, then River Dell for the purpose of Sections 5, 6 and 7 of this Amended Agreement, shall be considered a Secondary Developer.”

Paragraph 7.A.i on page 15 states:

- “i. River Dell, in selling tracts of land in Exhibit A to Secondary Developers may assign in writing to that Secondary Developer the rights for the specific tract of land to be served by a portion of the capacity in the 500,000 gpd bulk guaranteed capacity in the Bulk Wastewater Agreement, with the Secondary Developer of that parcel assuming all the rights and obligations of River Dell as set forth in this Amended Agreement to install at that Secondary Developer’s cost, all the wastewater collection system, interconnection to and necessary upgrades to the existing collection system, and pay Heater the cash contribution in aid of construction for the County’s Capacity Fees as specified in Paragraph 7.I. **and Pump Station and Force Main as specified in Paragraph 7.G. (emphasis added)** for that specific tract of land developed by the Secondary Developer being a portion of Exhibit A. If River Dell develops a tract of Flowers Plantation,

then River Dell for purposes of Section 7 of this Agreement, shall be considered a Secondary Developer.”

The Pump Station and Force Main are described in Paragraph G.i. on pages 17 and 18 which state:

- “G. Pump Station and Force Main
- i. Heater shall construct a 700-gallon per minute wastewater pump station located on the south side of NC Hwy. 42 and in a westerly direction from Buffalo Creek, hereinafter referred to as “Pump Station,” and a 12” ductile iron wastewater force main from the Pump Station to connect on an interim basis to Heater’s existing WWTP on the east side of the Neuse River and on the south side of NC Hwy. 42, hereinafter referred to as “Force Main.” The Force Main shall extend from the Pump Station to the unused 10” Force Main on NC Hwy. 42, which is a tributary to Heater’s WWTP on the Neuse River, or to the WWTP if DWQ doesn’t permit the connection to this ten-inch force main. Heater shall own, operate and maintain the Pump Station and Force Main.”

Paragraph G.iii. on page 18 states:

- “iii. Heater shall pay \$75,000 plus 50% of the balance of the cost of the construction of the Pump Station and Force Main. The \$75,000 shall be spread prorata over the total cost of the Pump Station and Force Main. Heater shall be reimbursed for this 50% balance of the construction cost through prorata payments by the Secondary Developers in the Flowers Plantation Sections I, II, and III-B. Heater’s 50% payment of the balance shall be recovered equally from the first 2,000 single-family equivalents. The \$75,000 shall be Heater’s investment and shall be included in Heater’s utility plant in service and shall not be reimbursed to Heater by developers.”

Paragraph G.v. on pages 18 and 19 state:

- “v. Heater shall collect from each Secondary Developer as a contribution in aid of construction at the time Heater executes the DWQ application for the collection system for that Secondary Developer’s tract, reimbursement for Heater’s cost in the Pump Station and Force Main, plus any necessary expansions and modifications. The cost to be recovered by Heater shall be divided based upon the first 2,000 customers.”

Paragraph G.vii. on page 19 states:

“vii. River Dell agrees to pay as a contribution in aid of construction 50% of the balance (with Heater paying \$75,000 as Heater’s investment and then 50% of the balance) of the total cost for planning, permitting, and construction of the Pump Station and Force Main. Payments shall be made as the engineering, permitting and construction progresses.”

The Public Staff did not find where the Amended Purchase Agreement was again filed with the Commission.

3. To what extent was the requirement for Heater to collect from the developer a wastewater capacity fee in the same amount than currently being charged by County for bulk wastewater treatment, picked up in any Certificate or contiguous extension contract filed with and approved by the Commission. Was the contract submitted in a rate case or was the contract submitted to the Commission, and the Commission actually ruled on any of the provisions of the contract?

As previously stated, the Bulk WW Agreement was approved by the Commission in Order dated March 24, 2003 in Docket No. W-274, Sub 392 where the Commission issued a Certificate.

The Amended Purchase Agreement as previously stated, was approved by the Commission in a notification of contiguous extension proceeding Docket No. W-274, Sub 538, Order dated April 6, 2006.

The Amended Purchase Agreement contained the following provisions on the collection of the current County wastewater capacity fees:

Paragraph 7.A.i. (previously quoted) provides the secondary developer shall pay Heater the cash CIAC for the County's Capacity Fees as specified in Paragraph 7.I.

Paragraph 7.I. states:

- "I. Cash Contribution in Aid of Construction for County Bulk Wastewater Capacity
Secondary Developer shall pay to Heater a cash contribution in aid of construction the same dollar amount per gallon as the County's then current bulk wastewater capacity fee, which at the time of the execution of this Amended Agreement is \$5.50 per gallon. This payment shall be made by Secondary Developer to Heater at the time Heater executes the application to DWQ for approval of the plans and specifications for that phase of the wastewater collection system."

In a notification of contiguous extension proceeding in Docket No. W-274, Sub 309, a contract with a secondary developer Flowers Plantation Commercial, LLC and Heater d/b/a Aqua North Carolina, dated October 9, 2007 was filed on December 21, 2007.

Paragraph II.G.i. on page 11 states:

- "G. Cash Contribution in Aid of Construction for Wastewater Treatment Plant (WWTP Capacity)
- i. Developer shall pay to the Utility a CIAC payment for Wastewater Treatment Plant Capacity, in accordance with the Bulk Wastewater Service Agreement for Flowers Plantation, I, II, III-B, dated May 14, 2002. The current CIAC payment is \$6.00/gallon. This CIAC payment shall be made by the Developer to Utility at the time Developer records the plat with the County and prior to the Utility providing service."

The Public Staff in 2006 ceased recommending for all water and wastewater utilities, that the Commission approve the developer contracts. This contract with Flowers Plantation Commercial, LLC, was not approved by the Commission, and none of the subsequently filed Flowers Plantation developer and secondary developer contracts were approved by the Commission.

The Aqua North Carolina, Inc. (Aqua) secondary developer contracts filed with the Commission subsequent to Docket No. W-274, Sub 309 and prior to Docket No. W-218, Sub 360 described below, did not contain within the definitions section the definition of the Bulk WW Agreement. These secondary developer contracts did contain the following paragraph on the CIAC for the County wastewater capacity:

“Cash Contribution in Aid of Construction for WWTP Capacity
Developer shall pay to Utility a cash contribution in aid of construction the same dollar amount per gallon that as the County’s then current bulk wastewater capacity fee which at this time is \$6.00 per gallon. Payment for this fee shall be paid by Developer to Utility at the time Aqua signs the plat for recording with the County. The charge per gallon may be amended from time to time by the County. These fees will be collected by the Utility based upon the County’s current charges.”

Secondary developer contracts filed on and after May 28, 2015 in Docket No. W-218, Sub 360, for parcels within Flowers Plantation Sections I, II, and III-B, had similar language on the payment for County capacity fees as the Agreement being Public Staff Becker Cross Examination Exhibit 21, dated August 15, 2017 between BFP Developers, LLC and Aqua North Carolina, Inc., filed on October 24, 2017. (Becker Cross Examination Exhibit 21)

Becker Cross Examination Exhibit 21 definitions contains the following on page 2:

“1.5. “Bulk Wastewater Agreement” shall mean that certain agreement signed by Aqua and Johnston County, dated May 14, 2002 and Amended September 30, 2009 for the purchase of bulk wastewater treatment per SFRE for each planed SFRE in a Subdivision.”

The cash CIAC for the County wastewater capacity in Becker Cross Examination Exhibit 21 is stated in Paragraph 3.4. as follows:

“3.4. Cash Contribution in Aid of Construction (CIAC) for WWTP Capacity.

Developer shall pay to Aqua a capital cost recovery charge the same dollar amount per gallon as the County’s current bulk wastewater capacity fee, under the Bulk Wastewater Agreement between Aqua and County, for each planned connection in that phase of Subdivision (currently \$6.00 per gallon). The CIAC shall be paid by Developer to Aqua for the lots being developed in the Subdivison at the time Developer records the Subdivision plat with the County and prior to Aqua providing service. Fees for lots that have not been paid for will be calculated based on the current capacity costs at the time the Subdivision plat is recorded.

Bulk WW Agreement Not Presented as Evidence in Prior Aqua General Rate Cases

The current Aqua general rate case Docket No. W-218, Sub 497 is the first time the Bulk WW Agreement was presented as evidence in an Aqua general rate case.”

4. Copy of First Amendment to Bulk WW Agreement

Attached as Exhibit 1 is the First Amendment to Bulk WW Agreement dated September 30, 2009, and executed by County, Rebecca Flowers and Aqua North Carolina, Inc. f/k/a Heater Utilities, Inc.

Respectfully submitted this 11th day of October, 2018.

PUBLIC STAFF
Christopher J. Ayres
Executive Director

David T. Drooz
Chief Counsel

Electronically Submitted
/s/ William E. Grantmyre
Staff Attorney

4326 Mail Service Center
Raleigh, North Carolina 27699-4300
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CERTIFICATE OF SERVICE

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

This the 11th day of October, 2018.

Electronically Submitted
/s/ William E. Grantmyre

STATE OF NORTH CAROLINA
COUNTY OF JOHNSTON

**FIRST AMENDMENT TO
BULK WASTEWATER SERVICE AGREEMENT
FOR FLOWERS PLANTATION
SECTIONS I, II, and IIIB**

THIS FIRST AMENDMENT TO BULK WASTEWATER SERVICE AGREEMENT FOR FLOWERS PLANTATION SECTIONS I, II AND IIIB (this "Amendment") is made effective as of the 30th day of September 2009, by and between JOHNSTON COUNTY (the "County") and REBECCA FLOWERS d/b/a/ RIVER DELL COMPANY ("River Dell") and AQUA NORTH CAROLINA, INC. f/k/a HEATER UTILITIES, INC. ("Aqua"). The County, River Dell, and Aqua are collectively hereinafter referred to as the "Parties."

WITNESSETH

WHEREAS, the Parties entered into that certain Bulk Wastewater Service Agreement dated May 14th, 2002 (the "Wastewater Agreement"); and

WHEREAS, the Wastewater Agreement provides that it shall not be modified, amended or changed in any respect except in writing, fully signed by the Parties; and

WHEREAS, the Wastewater Agreement requires the River Dell Elementary School (alternately referred to in the Wastewater Agreement as the K-5 school), Archer Lodge Middle School (hereafter and alternately referred to in the Wastewater Agreement as the "middle school"), and the Corinth Archer High School (hereafter and alternately referred to in the Wastewater Agreement as the "high school") as well as the existing Corinth Holder Elementary (K-5) school (hereafter "Corinth-Holder School"), collectively referred to as "Schools" to be retail wastewater customers of the County and the County to be a customer of

Aqua's paying Aqua's current uniform commercial rates, as approved by the North Carolina Utilities Commission for said retail wastewater customers; and

WHEREAS, on March 18, 2009, the Johnston County Schools was issued a permit (Permit No. WQ0033830) by the North Carolina Department of Environment and Natural Resources, Division of Water Quality (hereafter "DWQ") for the wastewater collection system extension for the High School which has a permitted wastewater sewage flow of 14,000 gallons per day. Said flow shall be collected by Johnston County Public Utilities wastewater system and shall be treated by the Neuse Colony Wastewater Treatment Facility owned and operated by Aqua; and

WHEREAS, the County has requested and Aqua agrees to treat the Corinth-Holder School wastewater collected by the Johnston County Public Utilities wastewater system in its Neuse Colony Wastewater Treatment Facility; and

WHEREAS, the Parties have mutually agreed to add provisions and clarifications to the Wastewater Agreement.

NOW, THEREFORE, in consideration of the premises and purposes set forth herein, the Parties agree as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.
2. Authorization. The individual executing this Amendment on behalf of Johnston County represents and warrants that the terms and conditions of this Amendment have been approved by the Johnston County Board of Commissioners in accordance with North Carolina law, and that he or she is authorized to execute this Amendment on behalf of Johnston County.

3. Wastewater Flow Allocations.

3.1. Currently, the K-5 School, the Middle School, and the High School are existing allowable County customers; the Corinth-Holder School shall become an existing customer under the provisions of this agreement. The DWQ permitted capacities of the Schools, attached hereto as Exhibit 3.1, are:

K-5 School	7,500 gpd
Middle School	3,746 gpd
High School	14,000 gpd
Corinth-Holder School	9,000 gpd

3.2. River Dell agrees to allocate flow to the County for the existing Corinth-Holder School, and Aqua agrees to accept such flow. The flow produced by the Corinth-Holder School shall not exceed the flow of 9,000 gallons per day ("gpd"), as permitted under DWQ Permit No. WQ0038938, unless otherwise approved by DWQ, Aqua, and River Dell.

3.3. County agrees that wastewater capacity allocated for the Schools shall not count against Aqua's 500,000 gpd guaranteed bulk wastewater allocation. Should the County have future flows into Aqua's wastewater treatment facility, it shall also not count against Aqua's 500,000 gpd minimum guarantee of bulk capacity allocation described in the Wastewater Agreement. The capacity allowance for the Schools set out herein shall be credited to River Dell and shall be in addition to the 500,000 gpd minimum guarantee and does not in any way limit that guarantee.

- 3.4. Prior to the Corinth-Holder School being connected to Aqua's system, the County shall fund the reasonable costs of an engineering flow study to determine if Aqua's collection system, including any related pump stations, is adequate to accept the flow from the School. The engineer to perform the study shall be selected by Aqua.
- 3.5. Parties agree that future connections to the County's wastewater collection facilities which are tributary to Aqua's wastewater facility must receive written approval from River Dell and Aqua authorizing the transmission, collection, treatment and disposal of the design flows prior to the County obtaining authorization to construct.
4. Retail Wastewater Customers of County. The Parties acknowledge and agree that the County shall allow the Corinth-Holder School to become a retail wastewater customer of the County whose wastewater shall be discharged into Aqua's wastewater collection, treatment, and disposal system. For the Corinth-Holder School, the County shall be a customer of Aqua's paying Aqua's current uniform commercial rates and account fees, as approved by the North Carolina Utilities Commission.
5. Annual Report. The County shall provide an annual report to River Dell and Aqua which depicts the monthly water usage for each County wastewater customer whose wastewater is tributary to Aqua's system.
6. General
- 6.1. Certain Terms. All capitalized terms not defined herein shall have the same meaning as set forth in the Wastewater Agreement.
- 6.2. No Other Amendments. This writing Addendum and the Wastewater Agreement embodies the entire agreement and understanding between

the parties hereto and there are no other agreements of understandings, oral or written with reference to the subject matter hereof that are not incorporated herein and superseded hereby. In the event of conflict between this Addendum and the Wastewater Agreement, which it amends, this Addendum shall control.

6.3. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall constitute an original, and all such counterparts shall together constitute one instrument.

6.4. Successors & Assigns. This Addendum to the Wastewater Agreement shall be binding upon and shall inure to the benefit of River Dell, County, and Aqua, and the successors and assigns of each

[Signature Page on following Page]

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment as of the date first above written.

ATTEST

Paula G. Woodard
Paula G. Woodard
Clerk to Board of Commissioners

JOHNSTON COUNTY
Rick J. Hester
Rick J. Hester
County Manager

REBECCA FLOWERS
d/b/a RIVER DELL COMPANY
Rebecca D. Flowers
Rebecca D. Flowers

AQUA NORTH CAROLINA, INC.
(f/k/a Heater Utilities Inc.)

Name: Thomas J. Roberts
Title: President

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment as of the date first above written.

ATTEST

JOHNSTON COUNTY

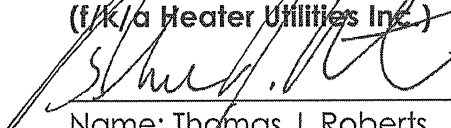
Paula G. Woodard
Clerk to Board of Commissioners

Rick J. Hester
County Manager

REBECCA FLOWERS
d/b/a RIVER DELL COMPANY

Rebecca D. Flowers

AQUA NORTH CAROLINA, INC.
(f/k/a Heater Utilities Inc.)



Name: Thomas J. Roberts
Title: President

Exhibit 3.1

DWQ Permits

School Name	DWQ Permit No.
River Dell Elementary School	WQ0021585
Archer Lodge Middle School	WQ0030967
Corinth-Holder High School	WQ0033880 & WQ0033499
Corinth-Holder Elementary School	WQ0038938