STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. W-1305, SUB 35

DOCKET NO. W-1300, SUB 77

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
WLI Investments, LLC,	)	
	)	
Complainant	)	
	)	**REPLY AND MOTION FOR**
v.	)	**PROCEDURAL ORDER**
	)	
Pluris Hampstead, LLC, and Old North State Water Company, LLC,	)	
	)	
	)	
Respondents.	)	
	)	

NOW COMES WLI Investments, LLC, ("WLI Investments"), by and through the undersigned counsel and pursuant to Commission Rule R1-5 and R1-9, and the Commission's *Order Serving Answer and Motion to Dismiss*, issued in the above-captioned proceeding on January 24, 2022, and files this **Reply and Motion for Procedural Order** ("Reply and Motion") responding to the Response to Complaint and Petition for Declaratory Ruling and Motion to Dismiss Complaint ("Respondents' Answer"), which was jointly filed by Pluris Hampstead, LLC ("Pluris") and Old North State Water Company, LLC "ONSWC") (together with Pluris, "Respondents") in the above-captioned proceeding on January 18, 2022. In support of its Reply and Motion, WLI Investments respectfully shows unto the Commission as follows:

1. On January 3, 2022, WLI Investments filed its Complaint and Petition for Declaratory Ruling ("Complaint"), alleging, *inter alia*, that the Respondents engaged in

unreasonable and unjust practices in their dealings with WLI Investments in breach of a 2018 contract between WLI Investments and ONSWC ("Development Agreement") and in violation of certain provisions of the Public Utilities Act, arising from the development activities and the provision of utility service in and adjacent to Salters Haven subdivision in Pender County, North Carolina.

2. On January 18, 2022, Respondents filed the Respondents' Answer, denying many of the factual allegations of the Complaint and requesting that the Commission issue an order dismissing the Complaint for failure to state a claim upon which relief can be granted.

3. On January 24, 2022, in the above-captioned proceeding, the Commission issued an *Order Serving Answer and Motion to Dismiss*.

4. The Commission's *Order Serving Answer and Motion to Dismiss* requests that WLI Investments advise the Commission whether the Respondents' Answer is acceptable to WLI Investments, and if not, whether WLI Investments desires a hearing in this proceeding to present evidence in support of the allegations of the Complaint.

5. Pursuant to the Commission's *Order Serving Answer and Motion to Dismiss*, WLI Investments informs the Commission that Respondents' Answer is not acceptable to WLI Investments and that WLI Investments desires a hearing in this proceeding to present evidence in support of the allegations of the Complaint, for reasons more particularly described in this Reply and Motion.

SUMMARY

This dispute arises from ONSWC's failure to perform on its obligations under the Development Agreement. ONSWC entered into the Development Agreement with WLI Investments with the essential obligations to expand the Majestic Oaks WWTP and to purchase

the wastewater collection systems that WLI Investments agreed to construct in Salters Haven and the Lea Tract. ONSWC later changed its mind and decided to sell its utility assets to Pluris and to not expand the Majestic Oaks WWTP. There is no dispute between the parties that the Majestic Oaks WWTP needs to be expanded and WLI Investments has supported that effort as it agreed to do in the Development Agreement. Alternatively, the Majestic Oaks WWTP could be decommissioned with an alternative treatment plant capacity made available as Pluris has proposed to provide at its Hampstead WWTP. There is also no dispute between the parties that Pluris' Hampstead WWTP could provide that alternative treatment plant capacity and that doing so could be found to be in the public interest. Before the Commission, WLI Investments seeks to redress ONSWC's breach of contract, resolve the present uncertainty caused by that breach of contract, and secure adequate service for the Salters Haven subdivision and the Lea Tract in a manner that furthers the public interest.

This dispute escalated to these formal proceedings because Pluris, unlike ONSWC, does not accept new systems that use grinder pumps and low-pressure wastewater facilities. Pluris used its bargaining power as the purchaser of ONSWC's utility system and as the only practical alternative supplier of wastewater treatment capacity in the vicinity to impose its aversion to grinder pumps and low-pressure facilities on ONSWC engendering ONSWC's breach of its obligations under the Development Agreement. In doing so, ONSWC is acting unreasonably, Pluris is violating certain provisions of the Public Utilities Act as identified in the Complaint, Respondents have materially impaired WLI Investments ability to conduct business, and, most importantly, the owners and future owners of lots in Salters Haven and the Lea Tract are left without access to adequate wastewater treatment services.

Respondents' denials demonstrate that there are numerous factual disputes between the parties. The Commission should enter upon a hearing to receive evidence and resolve those disputes. The Commission, based on its independent review of the provisions of the Development Agreement, should find that the provisions of the contract support the conclusion that grinder pumps and low-pressure facilities are permitted to be installed as part of the wastewater collection systems that WLI Investments agreed to construct in Salters Haven and the Lea Tract. To the extent that the provisions of the Development Agreement are found to be ambiguous, consideration of extrinsic evidence is appropriate to interpret that contract. Ambiguities in the Development Agreement should be construed against ONSWC, the drafter of the contract. Ultimately, after receiving evidence, the Commission should resolve this dispute consistent with the public interest, by addressing the Respondents' unreasonable and unjust conduct, resolving the uncertainty facing WLI Investments, and determining the just interpretation of the Development Agreement by order declaring the status of the parties' rights and legal relations as prayed for in the Complaint.

STANDARD OF REVIEW

When acting in a judicial capacity, the Commission "shall render its decision upon questions of law and of fact in the same manner as a court of record."[1] When presented to the Commission, a motion to dismiss for failure to state a claim upon which relief may be granted is equivalent to a motion under Rule 12(b)(6) of the North Carolina Rules of Civil Procedure. A motion under Rule 12(b)(6) "'tests the legal sufficiency of the complaint. In ruling on the motion the allegations of the complaint must be viewed as admitted, and on that basis the court must determine as a matter of law whether the allegations state a claim for which relief may be

[1] N.C. Gen. Stat. § 62-60.

granted.'"[2] Further, "'[t]he function of a motion to dismiss is to test the law of a claim, not the facts which support it. Resolution of evidentiary conflicts is thus not within the scope of the Rule.'"[3] Moreover, "[a] motion to dismiss under Rule 12(b)(6) should not be granted '*unless it appears to a certainty that plaintiff is entitled to no relief under any state of facts which could be proved in support of the claim*.'"[4]

ARGUMENT

I. *Respondents Present an Interpretation of the Provisions of the Development Agreement that is Inconsistent with North Carolina Law.*

Respondents persist in presenting to the Commission an interpretation of the provisions of the Development Agreement that is inconsistent with North Carolina law. The Respondents' interpretation lacks support in the law of contracts as embraced by the decisions of the appellate courts of this state. The question is whether WLI Investments is permitted under the terms of the Development Agreement to install a wastewater collection system that includes grinder pumps and low-pressure wastewater facilities in both Salters Haven and the Lea Tract. The parties' dispute on this issue centers on the following provisions of the Development Agreement: Section 4. "Design, Permitting, and Installation of On-Site Wastewater Collection System."; Section 5. "Design, Permitting, and Installation of ESA Wastewater Collection System."; and Section 16.6 "Conveyance of the Wastewater Collection System Assets."

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[2] *Cube Yadkin Generation, LLC v. Duke Energy Progress, LLC*, 269 N.C. App. 1, 8, 837 S.E.2d 144, 149 (2019) (*quoting Stanback v. Stanback*, 297 N.C. 181, 185, 254 S.E.2d 611, 615 (1979) (citations omitted)).

[3] *Cube Yadkin Generation, LLC v. Duke Energy Progress, LLC*, 837 S.E.2d 144, 150, 269 N.C. App. 1, 10 (N.C. App. 2019) (*quoting White v. White*, 296 N.C. 661, 667, 252 S.E.2d 698, 702 (1979)).

[4] *Id.* (*quoting Sutton v. Duke*, 277 N.C. 94, 103, 176 S.E.2d 161, 166 (1970) (citation and quotation marks omitted) (emphasis in original)).

Section 4 of the Development Agreement relates to the installation of the wastewater collection system in the Salters Haven at Lea Marina Subdivision and incorporates the definition of "On-Site Wastewater Collection System" at Section 1.28 of the Development Agreement. "On-Site Wastewater Collection System" is defined as "the Wastewater Service Lines (defined below), *pressure sewer lines*, *gravity sewer lines*, force mains, lift stations, sewer clean outs, and all appurtenant equipment that will deliver wastewater produced by the houses within the subdivision." (emphasis added).

Section 5 of the Development Agreement relates to the installation of the wastewater collection system in the adjacent Lea Tract, which is referred to as the "extended service area" or "ESA" in the Development Agreement. In contrast to Section 4 that uses the defined term "On-Site Wastewater Collection System," the Development Agreement does not define "ESA Wastewater Collection System."

Respondents admit that the Development Agreement does not expressly prohibit the use of grinder pumps or low-pressure facilities and further admit that the Development Agreement affirmatively allows the installation of low-pressure wastewater collection facilities and grinder pumps in at least a portion of the Salters Haven Subdivision.[5] Oddly, Respondents then "admit," without citation to a specific provision of the Development Agreement and unresponsive to the allegations of paragraph 18 of the Complaint, that the Development Agreement expressly provides for the installation of a gravity collection system to serve the Lea Tract or ESA.[6] Yet, the provisions of Section 5 are nearly identical to those of Section 4, and both make use of the defined term

[5] Ans. ¶¶ 12, 13, and 18.

[6] Ans. ¶. *See also Ans*. ¶ 34.

"Wastewater Service Line." "Wastewater Service Line" is defined in Section 1.34 of the Development Agreement to mean:

> …the portion of individual household wastewater line for which ONSWC shall assume ownership and maintenance responsibilities. The Service Line shall include only that portion of the wastewater line that extends from the wastewater clean-out or *Grinder Pump Valve Box* to ONSWC's wastewater main located at or near the street. The portion of the line extending from the home or commercial building to the wastewater clean-out or *Grinder Pump Station and Grinder Pump Valve Box* shall not be included in the term "Service Line."

(emphasis added).

Thus, the intent of the parties to the Development Agreement as reflected in the plain language of the Development Agreement was to allow the installation of grinder pumps and low-pressure facilities in both Salters Haven and the Lea Tract, and the Development Agreement obligates ONSWC to assist in pursuing environmental permitting and to obtain a CPCN for the entirety of Salters Haven and the Lea Tract. The plain language of the contract supports the view that ONSWC and WLI Investments understood and agreed that grinder pumps would be present in both the Salters Haven wastewater collection system (the "On-Site Wastewater Collection System") and the Lea Tract or ESA (the "ESA Wastewater Collection System"). There is simply no basis for the Respondents' interpretation that the provisions of the Development Agreement prohibit the use of grinder pumps and low-pressure facilities or require the installation of a gravity fed sewer system. To the contrary, the text of the Development Agreement plainly indicates that WLI Investments was to install "Wastewater Service Line[s]" in Salters Haven and the Lea Tract, and that those service lines would begin at the clean-out or at the Grinder Pump Station and Grinder Pump Valve Box and terminate at ONSWC's wastewater main at or near the street. In other words, the Development Agreement permits, but neither requires nor forbids, the installation of grinder pumps and low-pressure facilities in Salters Haven and the Lea Tract.

This view is further supported by Section 16 of the Development Agreement, which includes a specific notice requirement to homeowners in Salters Haven and the Lea Tract regarding maintenance responsibilities for grinder pumps. Importantly, and contrary to the Respondents' response[7] nothing in Section 16 limits the application of the grinder pump notice to Salters Haven subdivision or otherwise indicates an exclusion of the Lea Tract.

Again, the plain language of the Development Agreement supports the interpretation that the intent of the parties to the Development Agreement was to allow grinder pumps and low-pressure facilities to be installed as part of the wastewater collection systems in Salters Haven and the Lea Tract. However, the Commission, based on its independent review, may also find that the provisions of the Development Agreement are ambiguous, requiring interpretation. To the extent that the Development Agreement is ambiguous, extrinsic evidence is appropriately considered and the Respondents' arguments must fail in the face of the fact that ONSWC drafted the Development Agreement and "the well-recognized rule that an ambiguity in a written contract is to be construed against the party who prepared the writing."[8]

II. *Respondents Misapply the Parol Evidence Rule.*

Although not particularly identifying the evidence that is sought to be "excluded," Respondents have misapplied the parol evidence rule as developed by the state's appellate courts. The parol evidence rule is a rule of substantive contract law and not a rule of evidence.[9] As cited

[7] Ans. ¶ 12

[8] *Root v. Allstate Ins. Co.*, 158 S.E.2d 829, 834, 272 N.C. 580, 585 (1968).

[9] *Smith v. Central Soya of Athens, Inc.*, 604 F.Supp. 518 (E.D. N.C. 1985) (*citing United States v. Bethlehem Steel Co.*, 215 F.Supp. 62, 68 n. 12 (D.Md.1962), aff'd. 323 F.2d 655 (4th Cir.1963); *Rock-Ola Manufacturing Corp. v. Wertz*, 282 F.2d 208, 210 (4th Cir.1960).

by Respondents[10] in *Tar River Cable TV, Inc.*, the parol evidence "rule is that, in the absence of fraud or mistake or allegation thereof, parol testimony of prior or contemporaneous negotiations or conversations *inconsistent with the writing*, or *which tend to substitute a new and different contract* from the one evidenced by the writing, is incompetent."[11] Evidence of prior and contemporaneous negotiations and agreements are not admissible to *vary, add to, or contradict the writing*.[12] Prior or contemporaneous evidence may only be admitted to clarify an ambiguity in the totally integrated written contract.[13] Thus, the relevant exception to the parol evidence rule is stated as follows:

> "Whenever the terms of a written contract or other instrument are susceptible of more than one interpretation, or an ambiguity arises, or the intent and object of the instrument cannot be ascertained from the language employed therein, parol or extrinsic evidence may be introduced to show what was in the minds of the parties at the time of making the contract or executing the instrument, and to determine the object for or on which it was designed to operate."[14]

The instant case falls squarely within this long-recognized exception to the parol evidence rule: WLI Investments is not seeking to introduce parol evidence that is inconsistent with the written Development Agreement, nor is WLI Investments seeking to substitute a new and different contract; instead, WLI Investments seeks to give meaning to provisions of the Development Agreement by proof of what was in the minds of the parties when the contract was executed as to terms that are ambiguous and, thus, require interpretation by the Commission. This evidence goes to the intent of the parties and the meaning of the provisions of the Development Agreement and

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[10] Ans. at p. 19.

[11] *Tar River Cable TV, Inc. v. Standard Theatre Supply Co.*, 62 N.C. App. 61, 64-65, 302 S.E.2d 458, 460 (1983) (*quoting Neal v. Marrone*, 239 N.C. 73, 77, 79 S.E.2d 239, 242 (1953) (emphasis added).

[12] *Smith, supra*., at 524 (*citing Rowe v. Rowe*, 305 N.C. 177, 185, 287 S.E.2d 840, 845 (1968) (emphasis added).

[13] *Id.* (*citing Root v. Insurance Company*, 272 N.C. 580, 158 S.E.2d 829 (1986).

[14] *Root v. Allstate Ins. Co.*, 158 S.E.2d 829, 272 N.C. 580 (N.C. 1968) (*quoting* 30 Am.Jur.2d, § 1069).

does not vary or contradict the terms of the Development Agreement. Thus, Respondents "Third Defense," relies upon the general rule but ignores a relevant and applicable exception long recognized by North Carolina courts. "Where giving effect to the merger clause would frustrate and distort the parties' true intentions and understanding regarding the contract, the clause will not be enforced."[15]

III. *The Allegations of the Complaint Must be Treated as Admitted. Respondents' Denials of the Allegations of the Complaint Demonstrate that the Motion to Dismiss must be Denied and that the Commission should Proceed to Enter upon a Hearing to Receive Evidence.*

WLI Investments' review of Respondents' Answer discloses that there are numerous instances of Respondents' denying the allegations in the Complaint, representing factual disputes between WLI Investments and Respondents that cannot be resolved by a motion to dismiss. Thus, the Commission should deny Respondents' motion to dismiss and proceed to schedule a hearing where evidence may be presented in support of the Complaint. When viewing the allegations of the Complaint as admitted, the allegations support a straightforward application of standards for reasonable conduct of a public utility to reach the conclusion that the Respondents have acted unreasonably and unjustly in dealing with WLI Investments in violation of the provisions of the Public Utilities Act, as more particularly identified in the Complaint, and in breach of the Development Agreement.

In Respondents' first defense, Respondents make a blanket denial of the allegations of the Complaint. These denials serve to demonstrate that there are factual disputes between the parties

[15] *Zinn v. Walker*, 87 N.C. App. 325, 333, 361 S.E.2d 314, 318 (N.C. App. 1987) (*citing Loving Co. v. Latham*, 20 N.C. App. 318, 201 S.E.2d 516 (1974).

that cannot be resolved at the motion to dismiss stage.[16] As a matter of law, there is no disagreement between the parties that the Commission has jurisdiction over this dispute. Respondents admit that the Commission has general supervisory authority over the Respondents pursuant to N.C. Gen. Stat. § 62-30.[17]

In Respondents' second defense, Respondents address the factual allegations of the Complaint with numerous denials of the allegations of the Complaint and several allegations of fact that WLI Investments will dispute by evidence presented at the hearing held in this proceeding or seek to exclude based on relevancy or other grounds. WLI Investments will reserve a full response to these denials and allegations for the hearing; however, three examples merit response here.

First, Respondents offer a lengthy explanation of why Pluris will not accept new systems that use grinder pumps but disregard or outright ignore that the Development Agreement and the covenants for Salters Haven place this responsibility on the homeowner and not the utility, eliminating any of the problems that the Respondents allege.[18] Part of that explanation states that WLI Investments has a lack of confidence in the Pluris Hampstead WWTP.[19] This misconstrues the allegation at ¶ 62 of the Complaint: WLI Investments has lost confidence that ONSWC will perform on its obligations under the Development Agreement because ONSWC has represented to the Commission that it will not expand the Majestic Oaks WWTP as agreed in the Development Agreement and ONSWC has not afforded WLI Investments any assurances that adequate

[16] *Cube Yadkin*, *supra.*, 8, 10.

[17] Ans. ¶ 8.

[18] *See* Ans. ¶ 39.

[19] *See* Ans. ¶ 39.

alternative performance consistent with the Development Agreement will be obtained. As stated above, it may well be in the public interest to decommission the Majestic Oaks WWTP, but that is not what ONSWC agreed to do in the Development Agreement. Nor did WLI Investments and ONSWC agree that a gravity wastewater collection system was required to be installed in Salters Haven or the Lea Tract. The only plausible explanation, and the explanation that WLI Investments will demonstrate by evidence at the hearing in this proceeding, is that ONSWC changed its mind after executing the Development Agreement, at least in part because of the influence Pluris exerted on ONSWC as purchaser of ONSWC's utility assets.

Second, the Respondents set out a lengthy argument about state permitting, alleging that any delay in obtaining permits is due to lack of "standing" and the absence of a CPCN authorizing service to the entirety of Salters Haven and the Lea Tract. This is a circular argument that ignores the reality facing WLI Investments: the timing of seeking permits, including a CPCN, is almost entirely in the control of the Respondents. This reality creates an imbalance in bargaining power that is ripe for abuse and underscores the very need for the existence and authority of this Commission. Moreover, it is nonsensical to present the absence of a CPCN as a basis for defense when expansion of the relevant franchised service territory is part of the relief that WLI Investments is seeking. Respondents admit that ONSWC has not signed permit applications for the Lea tract because the system design includes grinder pumps and low-pressure facilities.[20] Later, Respondents allege that the permit application cannot be signed because no CPCN has been issued for the Lea Tract.[21] Yet, numerous filings of record with the Commission demonstrate that

[20] Ans. ¶ 23.

[21] Ans. ¶ 38.

Respondents routinely obtain DEQ permits prior to or concurrently with seeking a CPCN.[22] Other than their erroneous and changed interpretation of the Development Agreement, Respondents offer no justification for treating WLI Investments Salter Haven and Lea Tract project differently than these other projects.

Third, Respondents allege that WLI Investments has an intent to "install the cheapest possible collection system in the Lea Tract and passing the resulting costs of doing so on to rate payers/homeowners."[23] WLI Investments maintains that its intent in this regard and its subjective motivations are irrelevant to resolving this dispute. Instead, the parties' objective manifestations of intent are controlling, including the provisions of the Development Agreement and the circumstances surrounding its execution, such as communications between the parties that indicates their intent at the time the Development Agreement was executed. Further, even if relevant, this allegation is misleading in its omission of key facts and deficient in its failure to respond to the allegations of the Complaint.

WLI Investments alleges that "[t]he use of grinder pumps and low-pressure facilities is required in the Lea Tract to avoid economic waste, overcome the realities of topography, and to adequately provide wastewater service to utility customers in the Lea Tract."[24] WLI Investments uses the term "economic waste" to denote that the installation of low-pressure facilities and grinder pumps can and do perform adequately the essential task of delivering wastewater effluent to the

[22] *See e.g.*, Application for Certificate of Public Convenience and Necessity, No. W-1305, Sub 34 (*filed* Mar. 16, 2021) (stating, in part, "In the interest of time required by DWQ in its review of the collection system plans and prior to issuing a permit, DEQ is requesting the Public Staff provide the standard letter used in the past indicating the Commission approval is likely. Pluris Hampstead, LLC will be requesting the Public Staff to provide a letter."). *See also* Application for Certificate of Public Convenience and Necessity, No. W-1305, Sub 31 (*filed* Mar. 10, 2021) (same); and *see* NCUC Docket No. W-1300, Sub 74 (NC DEQ "approval letter" obtained after application for extension of CPCN).

[23] Ans. ¶ 72, 73; *see also* Ans. ¶ 47.

[24] Cmplt. ¶ 47.

utility for further conveyance to a wastewater treatment plant, for less cost. Respondents failed to address the allegation that the topography of the Lea Tract requires the use of grinder pumps and low-pressure facilities because it is a low-lying area that makes it practically impossible and economically prohibitive to excavate to a sufficient depth to construct a properly functioning gravity-fed sewer system. Respondents also fail to address the allegation that the use of grinder pumps and low-pressure facilities provide adequate wastewater service. While Respondents argue that a gravity-fed system with a single lift station would be "superior," this is not the appropriate standard for determining the parties' rights and obligations under the Development Agreement or for reasonableness under the provisions of the Public Utilities Act. Further, it is acknowledged that WLI Investments is a for-profit enterprise; however, WLI Investments disputes that the profit motive alone is sufficient to demonstrate any wrongdoing on WLI Investments' part. WLI Investments seeks only to obtain what was agreed upon in the Development Agreement: access to adequate wastewater treatment service capacity on reasonable rates, terms, and conditions, full cooperation in permitting, and the ability to construct a wastewater collection system designed consistent with the requirements of the Development Agreement, among the other obligations agreed upon. The Commission is authorized to resolve this dispute and to declare the rights and legal status of the parties, consistent with the public interest by granting the relief requested in the Complaint.

Respondents' response to each count of the Complaint speaks for itself and serves to demonstrate that there are numerous factual disputes between the parties that cannot be resolved on a motion to dismiss. At this stage, the allegations of the Complaint must be taken as admitted and the motion to dismiss should not be granted unless the Commission determines that there is

no factual scenario under which WLI Investments can prove its claim.[25] The Complaint sets out allegations that support a straight-forward application of the provisions of the Public Utilities Act to reach the conclusion that Respondents have acted unreasonably and unlawfully and that ONSWC has breached its contract obligations under the Development Agreement. The Commission should resolve this dispute by issuing an order declaring the status of the parties' rights and legal relations as requested in the Complaint. Respondents' Answer fails to demonstrate that WLI Investments' claims are barred as a matter of law. Therefore, the motion to dismiss should be denied and the Commission should proceed to enter upon a hearing to receive evidence in support of the Complaint.

CONCLUSION

Based upon the foregoing, WLI Investments maintains that the factual disputes between the parties herein require that the Commission enter upon a hearing to receive evidence from the parties.[26] In addition to the numerous factual disputes, the foregoing demonstrates that the Respondents have failed to show that WLI Investments' claims are barred as a matter of law.[27] Thus, the Respondents motion to dismiss must be denied.

[25] *Cube Yadkin*, supra., at 8, 10.
[26] *Cube Yadkin*, *supra.*, at 8.
[27] *Id.* at 10.

WHEREFORE, WLI Investments respectfully requests that the Commission enter an order denying the motion to dismiss and setting this matter for hearing, establishing discovery guidelines, and addressing such other matters as the Commission deems appropriate.

Respectfully submitted this 1st day of February, 2022.

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CERTIFICATE OF SERVICE

The undersigned, Patrick Buffkin, certifies that a copy of the foregoing Reply and Motion for Procedural Order has been served upon counsel for the Respondents herein, with a courtesy copy to counsel for the Public Staff, by electronic mail this the 1st day of February, 2022.

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