

STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

DOCKET NO. W-1034, SUB 8

DOCKET NO. W-1034, SUB 10

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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|--|---|--------------------------|
| DOCKET NO. W-1034, SUB 8                         | ) |                          |
|  | ) |                          |
| In the Matter of                                 | ) |                          |
| Application by Water Resources, Inc., for        | ) |                          |
| Authority to Increase Rates for Water Utility    | ) |                          |
| Service in Rocky River Plantation Subdivision in | ) |                          |
| Cabarrus County and River Walk Subdivision in    | ) |                          |
| Mecklenburg County, North Carolina               | ) |                          |
|  | ) |                          |
| DOCKET NO. W-1034, SUB 10                        | ) | RESPONSE TO PUBLIC STAFF |
|  | ) | MOTION TO RAISE BOND     |
| In the Matter of                                 | ) | AMOUNT OF WATER          |
| Lenny DeVitto, 8529 Indian Summer Trail,         | ) | RESOURCES, INC.          |
| Harrisburg, North Carolina 28075,                | ) |                          |
|  | ) |                          |
| Complainant                                      | ) |                          |
|  | ) |                          |
| v.   | ) |                          |
|  | ) |                          |
| Water Resources, Inc.,                           | ) |                          |
|  | ) |                          |
| Respondent                                       | ) |                          |

**NOW COMES** Respondent Water Resources, Inc. (“Water Resources” or “the Company”), by and through the undersigned counsel and pursuant to the Commission’s *Order Establishing Deadlines for Filing Response and Reply to Public Staff’s Motion*, and files this Response to Public Staff Motion to Raise Bond Amount of Water Resources, Inc. (“Public Staff’s Motion”). Water Resources respectfully requests that the Commission take under advisement this Response and dismiss the Public Staff’s Motion with prejudice. In support thereof, Water Resources respectfully shows unto the Commission as follows:

## BACKGROUND

1. On September 29, 2022, the Public Staff filed the Public Staff's Motion, reciting a voluminous record of the history, actions on the part of the Company, and regulatory and civil enforcement action related to Water Resources' Rocky River Subdivision water system.

2. On October 3, 2022, Water Resources filed a Motion for Extension of Time, requesting that the Commission allow the Company 45 days in which to file a response to the Public Staff's Motion.

3. On October 10, 2022, the Commission issued an *Order Establishing Deadlines for Filing Response and Reply to Public Staff's Motion*. That Order allows Water Resources until October 25, 2022, to file a response to the Public Staff's Motion.

## ARGUMENT

1. The Public Staff's Motion is not evidence and cannot provide a basis for a judicial determination by the Commission.

Pursuant to N.C. Gen. Stat. § 62-65(a), the decisions and orders of the Commission must be supported by competent material and substantial evidence upon consideration of the whole record. Typically, the Commission sets the bond amount for a water utility at its regularly scheduled staff conference upon approval of a recommendation by the Public Staff and agreement or non-opposition of the utility without need for taking evidence. However, that typical practice does not obviate the statutory requirement for the Commission's decisions to be supported by competent material and substantial evidence when the justification for an increase or the amount of an increase is disputed. The Public Staff's Motion is not accompanied by a verification or other sworn statement that would allow the Commission to appropriately treat the Public Staff's Motion as evidence. As such, it would be procedurally inappropriate and reversible error for the

Commission to grant the Public Staff’s motion in the absence of record evidence to support the Commission’s decision. In addition, and as is discussed below, the recent actions by the Company toward achieving environmental compliance and implement the directives of the Commission are all aimed at reducing the risk of the Company “providing inadequate, inconsistent and/or insufficient water service.”<sup>1</sup> Thus, the current record in these proceedings is devoid of competent material and substantial evidence that an increase in bond amount is required or justified, and a full record will demonstrate that no increase in bond amount for Water Resources is warranted.

2. The Public Staff’s Motion Provides an Incomplete Recitation of the Record in this Proceeding and Includes Statements that Lack Evidentiary Support.

The Public Staff’s Motion provides an incomplete recitation of the record in this proceeding and includes statements that lack evidentiary support. First, as noted above the Public Staff’s Motion is not accompanied by a verification or other sworn statement that would allow the Commission to appropriately treat the Public Staff’s Motion as evidence. Second, the Public Staff recites a lengthy history of actions by the Commission, the North Carolina Department of Environmental Quality (“NC DEQ”), and the Public Staff, but largely omits or ignores the most recent actions taken by the Company to resolve the Notices of Violations (NOVs) and to keep the Commission apprised of its actions to do so. For example, the Public Staff’s Motion lacks any mention of the Company’s recently filed Supplemental Compliance Status Update Report of Water Resources (“Supplemental Status Update”).<sup>2</sup> The Supplemental Status Update details the current status of the Company’s efforts to obtain compliance with NC DEQ’s regulations, including the

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<sup>1</sup> See Public Staff’s Motion, at 13 (quoting N.C. Gen. Stat. § 62-110.3(a)(1)-(5)).

<sup>2</sup> See Supplemental Compliance Status Update Report of Water Resources, Inc., No. W-1034, Subs 8 and 10 (*filed* Sept. 19, 2022).

pending action in Superior Court and the Company's efforts to acquire an easement that will facilitate resolution of the environmental compliance issues.

With respect to the Superior Court action, and as is forecasted in the Supplemental Status Update, counsel for Water Resources appeared at an initial hearing in mid-October, continues working cooperatively with counsel for NC DEQ, and is awaiting the court's scheduling of a hearing in the matter. Water Resources has every reason to believe that the motion to show cause will be dismissed based on evidence that the Company is not willfully failing to comply with the Compliance Plan, but to the contrary, is making concrete progress and substantial investment to comply, and that any delay in compliance has resulted from factors beyond the Company's control.<sup>3</sup>

With respect to the easement acquisition, Water Resources accomplished the acquisition of the easement on October 18, 2022, and filed its Further Supplemental Status Report with the Commission on October 19, 2022, so informing the Commission as required by the Commission's *Order Requiring Further Report* issued in these dockets on September 23, 2022. Prior to the acquisition occurring, counsel for the Public Staff was copied on email communications to and from the landowner and was well aware that the Company was making a diligent effort to acquire the easement. It is worth noting here, as explained in detail in the Supplemental Status Report, this is the culmination of a two-year effort to cooperatively work with Tonya Hook (the customer/landowner) and to avoid litigation by reaching a voluntary agreement to sell the easement.

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<sup>3</sup> See N.C. Gen. Stat. § 5A-21(a)(2a) and (3).

Further, the Public Staff's Motion contains statements that are demonstrably false. The Public Staff's Motion states that the Commission has received numerous complaints from Water Resources' customers, without identifying a precise number or the time when those complaints were received. That may have been true many months ago, but recent feedback received from customers shows another reality that several customers are satisfied with Water Resources' service. The Company keeps a log of customer contacts, as it was required to do by the Commission. This log will show that the Company has responded to its customers promptly and resolved issues as expeditiously as possible, and that several of Water Resources' customers have provided the Company with positive feedback on its service in recent months. The Company would appreciate being apprised of the details of the numerous informal complaints allegedly received so that it can respond appropriately. The one customer complaint against Water Resources that proceeded to final adjudication by the Commission was dismissed as the relief requested "has either been provided, is not supported by the evidence, or is not within the Commission's jurisdiction to grant."<sup>4</sup> In doing so, the Commission recognized the "progress that WRI has made" and directed the Company to continue its efforts to improve customer service and to implement the Commission's directives to correct the environmental violations and generally improve its utility operations. The Company maintains that it is presently doing just that with deliberate effort. The Company vigorously denies the statement that it only takes action under threat of regulatory consequences.

In summary, the Public Staff has presented a one-sided view of the situation in Water Resources' Rocky River Plantation service area, ignoring the Company's most recent efforts and

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<sup>4</sup> Order Dismissing Complaint, p. 24, No. W-1034, Sub 9 (*issued* July 15, 2022).

highlighting only those facts which are now stale based on subsequent developments and only those that reflect poorly on the Company's record.

3. The Public Staff's Motion Contains Statements that are Contradicted by the Public Staff's Investigation Report and Recommendations of December 2021.

On December 20, 2021, the Public Staff filed its Public Staff Investigation Report and Recommendations. The Public Staff Investigation Report and Recommendations speaks to the status of the Superior Court action, stating that while the "Consent Judgment remains unresolved at this time, WRI is moving toward a resolution." The Public Staff Investigation Report and Recommendations also speaks to the primary issue raised in the Public Staff's Motion, the level of risk that Water Resources is "providing inadequate, inconsistent and/or insufficient water service." The Public Staff states in its Investigation Report and Recommendations that "[a]t this time, the Public Staff is not of the opinion that an emergency operator should be appointed. Neither River Walk nor Rocky River Plantation subdivisions are in imminent danger of losing adequate water utility service." Further, the Public Staff states that DEQ's Regional Engineer in the Mooresville Regional Office agreed that River Walk or Rocky River are not considered to be in imminent danger of losing adequate water utility service. The Public Staff's recommendations included noting that certain maintenance items have not been addressed, which the Company has now accomplished. Yet, the Public Staff's Motion makes no mention of these statements or subsequent developments, again, ignoring the facts that present positively (and accurately) on the Company's efforts, and failing to explain what has changed to increase risk that Water Resources is "providing inadequate, inconsistent and/or insufficient water service," which is required to justify a decision to increase the Company's required bond amount.

The Company believes that a full record of evidence should be the basis for the Commission’s decision in this matter, and that the development of a full record will demonstrate that the level of risk of Water Resources “providing inadequate, inconsistent and/or insufficient water service” has been substantially reduced in recent months. Further, the evidence will demonstrate that if the Company is permitted the time needed to accomplish these efforts that level of risk will be reduced to near zero. In short, the Public Staff’s Motion falls well short of meeting the burden of demonstrating that an increase in Water Resources’ bond amount is justified. This burden should include some responsibility to explain and demonstrate that circumstances have changed since December 2021 when the Public Staff filed its Investigation Report and Recommendations.

4. Water Resources is Investing Substantial Funds in the Water System in Rocky River Plantation and is Moving Toward Resolution of the Environmental Compliance issues raised in the Public Staff’s Motion.

As noted in the Public Staff Investigation Report and Recommendations, Water Resources “is investing substantial funds in the water utility systems at both River Walk and Rocky River Plantation subdivisions.”<sup>5</sup> That was true in December 2021 and remains true today, as evidenced by the acquisition of the easement and the Company’s efforts to resolve the environmental compliance issues. Again, the Public Staff’s Motion makes no mention of these facts. In addition, the Company is working to secure financing necessary to provide the funds to complete the interconnection project. That effort is underway presently and should be accomplished within the next 30 days, approximately.

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5. The Company's Efforts to Resolve the Environmental Compliance issues raised in the Public Staff's Motion will reduce the Risk of the Company Providing Inadequate, Inconsistent, and/or Insufficient Water Service.

As detailed above, the Company's efforts in 2021 and 2022 have been aimed at resolving the environmental compliance issues and, ultimately, to reduce the risk that Water Resources is "providing inadequate, inconsistent and/or insufficient water service." The completion of the interconnection with the Town of Harrisburg, as noted above, should reduce that level of risk to near zero. That reality would justify only the statutory minimum bond amount of \$10,000. If the substantial increase requested through the Public Staff's Motion is to be approved, the onus is on the Public Staff to resolve the contradiction that the Company's efforts are reducing risk to its customers while the Public Staff is arguing that the level of risk is increasing based on outdated facts and a one-sided view of the record.

**WHEREFORE**, Water Resources respectfully moves the Commission to dismiss the Public Staff's Motion with prejudice.

Respectfully submitted this 25<sup>th</sup> day of October, 2022.

/s/ Patrick Buffkin  
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*Counsel for Water Resources, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion for Extension of Time has been served by electronic delivery upon the parties of record.

This the 25<sup>th</sup> day of October, 2022.

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