

Edward S. Finley, Jr., PLLC
2024 White Oak Rd.
Raleigh, NC 27608
919-418-4516
edfinley98@aol.com
(N.C. Bar No. 6149)

January 18, 2023

Ms. Shonta Dunston, Chief Clerk
North Carolina Utilities Commission
Mail Service Center 4325
Raleigh NC 27699 -4300

RE: Docket Nos. W-1148, Sub 22; W-354, Sub 411

Dear Ms. Dunston:

Please accept for filing in the above caption dockets the petition of Mountain Air Property Owners Association, Inc to intervene in the application by Carolina Water Service Inc. of North Carolina to acquire the water and sewer assets of Mountain Air Utility Corporation serving the Mountain Air subdivision in Yancey County North Carolina and for approval of rates.

Thank you for your attention to this matter.

Sincerely,

/s/ Edward S. Finley, Jr.

Edward S. Finley, Jr.
Counsel for Mountain Air Property Owners
Association, Inc.

cc. Parties of Record

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

Docket No. W-1148, Sub 22
Docket No. W-354, Sub 411

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application for Transfer of Public Utility Franchise and for Approval of Rates by Carolina Water Service, Inc. of North Carolina and Mountain Air Utilities Corporation)	Petition of Mountain Air Property Owners Association, Inc. to Intervene
--	---	---

NOW COMES Mountain Air Property Owners Association, Inc. (“Mountain Air POA”) pursuant to NCUC Rule R1-19 and petitions to intervene in this docket.

The correct name, address and electronic mailing address of Petitioner is:

Mountain Air Property Owners Association, Inc.
100 Club Drive, Suite 102
Burnsville, NC 28714
c.o. Stephen Jacobs
sjaviator@gmail.com

The name, address and electronic mailing address of counsel representing Petitioner is:

Edward S. Finley, Jr., PLLC
2024 White Oak Rd.
Raleigh NC 27608
edfinley98@aol.com

1. On September 26, 2022, Carolina Water Service Inc. of North Carolina (“Carolina Water”) filed with the Commission in these dockets an application to acquire the water and sewer assets of Mountain Air Utilities Corporation (“MAUC”) serving the Mountain Air subdivision in Yancey County North Carolina and for approval of rates.

2. Mountain Air Property Owners Association is the official representative of the residents in the Mountain Air subdivision and is authorized to intervene in the application by Carolina Water to acquire the water and sewer systems through which they receive water and wastewater utility service.

3. Mountain Air POA has reviewed the Carolina Water application, and has been in communication with and received representations from representatives of Carolina Water and the Public Staff.

4. Carolina Water currently operates the Mountain Air water and sewer systems as an emergency operator pursuant to order by the Commission. Mountain Air POA supported the Commission's appointment of Carolina Water as the emergency operator and by and large has been satisfied with Carolina Water's fulfillment of its emergency operator responsibilities. To the extent that the Commission approves Carolina Water's application to receive the certificate of public convenience and necessity it will be necessary for the Commission to approve a final accounting for Carolina Water as the emergency operator and discharge the Company from its emergency operator responsibilities.

5. Mountain Air POA supports transfer of the Mountain Air water and sewer systems from MAUC to a larger, well financed, professionally owned and operated water and sewer company and the establishment of rates sufficient to operate the systems satisfactorily. Indeed, such a transfer and rate adjustment are long overdue. Based upon due diligence undertaken by the Mountain Air POA to date the POA supports the Carolina Water acquisition at this time.

6. Mountain Air POA wishes to learn the rates the Mountain Air water and sewer customers will be required to pay upon Carolina Water's acquisition and the justification therefor. Carolina Water's application requests that the Mountain Air customers be charged Carolina Water's uniform rates. Upon preliminary discussions with the Public Staff Mountain Air

POA understands that, based on its latest representations, the Public Staff may recommend system specific rates for the Mountain Air consumers. Mountain Air POA understands that Carolina Water currently has pending before the Commission an application to increase its uniform rates. To the extent that the Commission determines that the Mountain Air customers should be charged Carolina Water's system specific rates it will be important to the Mountain Air customers for the Commission to establish the rate base and level of expenses for the Mountain Air systems at an appropriate level.

7. The purchase price Carolina Water has contracted to pay for the Mountain Air facilities is set forth in its application. To the extent that the Commission considers approval of the purchase price as rate base should its application to receive the certificate be approved, it will be necessary to determine the net original cost in the hands of the seller at the time of acquisition. The POA understands that the Public Staff determines that the MAUC rate base is close to zero. The POA questions whether it will be in the public interest in establishing rate base based on the purchase price in this case and requests that the Commission address that issue.

8. Although Mr. Randy Banks was a principal in the entities that developed the subdivision served by the Mountain Air water and wastewater utility systems, upon information and belief, not all of the utility system real property was conveyed to the utility. The ownership of important water and wastewater utility system components is unclear.

9. Upon information and belief, recorded liens against the Mountain Air water and wastewater utility system assets far exceed the original cost net investment in the water and wastewater utility assets.

10. With liens totaling potentially \$15 million against MAUC plus accruing interest, the Commission should investigate the issue of title to property and incumbrances before acting on any proposed transfer such as that at issue in this docket.

11. The POA recognizes that existing general level of rates of MAWU prior to the appointment of the emergency operator has been in place for many years since approximately 2001, with the exception of Commission approved pass-through for bulk sewer treatment by the Town of Burnsville, and that rate adjustments may be necessary to enable the owner of the water and sewer systems to recover its costs and expenses and earn an adequate return.

WHEREFORE, the Mountain Air Property Owners Association respectfully requests that the Commission grant the following relief:

1. That the POA be permitted to intervene in this docket and participate in any proceedings and hearings the Commission may schedule.
2. That the Commission determine whether a plant acquisition adjustment is justified in this case.
3. That the Commission determine the appropriate rate adjustment necessary after acquisition.
4. That the Commission insure that the property and assets necessary for the provision of water and sewer utility service be within the hands of the owner and operator of the systems are free of liens and encumbrances.
5. That the Commission satisfy itself that upon discharge of Carolina Water as emergency operator, Carolina Water has complied with the provisions of N. C. Gen. § Stat. 62-118.

6. For such other relief as the Commission deems appropriate.

Respectfully submitted this 18th day of January 2023.

Edward S. Finley, Jr., PLLC

/s/ Edward S. Finley, Jr.

Edward S. Finley, Jr.


Arizona
STATE OF NORTH CAROLINA
Pima
YANCEY COUNTY

VERIFICATION

Stephen Jacobs, being first duly sworn, deposes and says that he is President of the Board of the Mountain Air Property Owners Association, Inc., that he has read the foregoing Motion to Intervene and that the same is 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 17th day of January 2023.

Mountain Air Property Owners Association, inc.

By: 
Stephen Jacobs
President

Sworn to and subscribed before me,
This the 17 day of January, 2023


Notary Public



CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Petition to Intervene was duly served upon parties of record either by depositing same in a depository of the United States Postal Service, first class postage prepaid, or by electronic delivery.

This the 18th day of January 2023

John Little
Public Staff-North Carolina Utilities Commission
4626 Mail Service Center
Raleigh, NC 26699-43000
john.little@psncuc.nc.gov

Jo Anne Sanford
P.O. Box 28085
Raleigh, NC 27611-8085
sanford@sanfordlawoffice.com

Daniel C. Higgins
2626 Glenwood Ave., Suite 560
Raleigh, NC 27608
dhiggins@bdppa.com

Edward S. Finley, Jr., PLLC

/s/ Edward S. Finley, Jr.

Edward S. Finley, Jr.
2024 White Oak Rd.
Raleigh, NC 27608
919-418-4516
edfinley98@aol.com

COUNSEL FOR PETITIONER