

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

**STAFF CONFERENCE AGENDA - SUPPLEMENTAL  
May 3, 2021**

***IMPORTANT NOTE: STAFF CONFERENCE  
WILL BE CONDUCTED VIA WEBEX.  
INSTRUCTIONS FOR PARTICIPATION AND A LINK TO VIEW  
THE MEETING WILL BE POSTED ON THE COMMISSION'S  
WEBSITE, NCUC.NET***

**COMMISSION STAFF**

NO AGENDA ITEMS

**PUBLIC STAFF**

**E. WATER**

- P1. [DOCKET NO. W-1148, SUB 20 – MOUNTAIN AIR UTILITIES CORPORATION –  
PETITION FOR APPOINTMENT OF EMERGENCY OPERATOR  
EXHIBIT NO. P-1](#)

## **MEMORANDUM**

TO: Supplemental Agenda – Commission Conference – May 3, 2021

FROM: PUBLIC STAFF – North Carolina Utilities Commission

### **E. WATER**

#### **P1. DOCKET NO. W-1148, SUB 20 – MOUNTAIN AIR UTILITIES CORPORATION – PETITION FOR APPOINTMENT OF EMERGENCY OPERATOR**

EXPLANATION: On April 29, 2021, the Public Staff filed a Petition for Appointment of Emergency Operator (EO) for the Mountain Air water and wastewater utility systems (Mountain Air) in Yancey County. The Public Staff requests that Carolina Water Service, Inc. of North Carolina (CWSNC) be appointed as the EO.

By email to the Commission dated April 5, 2021, Randy Banks, President of the Mountain Air Utilities Corporation (MAUC), requests that the Commission appoint an EO for Mountain Air. Mr. Banks states that there are many items that need immediate attention, and MAUC neither has adequate funds, nor access to adequate funds, to successfully operate, maintain, or make repairs and upgrades to Mountain Air. MAUC advises the Public Staff that it consents to the appointment of CWSNC as the EO for Mountain Air.

On April 26, 2021, the Mountain Air Property Owners Associations, Inc. (POA) filed a letter describing the deferred maintenance and the significant service deficiencies with Mountain Air, including water outages and wastewater leaks. The POA requested the Commission immediately appoint a professional operator for Mountain Air.

A real emergency exists regarding Mountain Air, as MAUC does not have and has no prospect for obtaining the funds for necessary operations, system replacements and upgrades, is in material non-compliance with N.C. Gen. Stat. §143-215.1 and its water permits and wastewater collection permits. MAUC's customers are in imminent danger of losing adequate water and wastewater utility service.

The Public Staff has discussed with CWSNC the willingness of CWSNC to become the EO of Mountain Air. CWSNC is familiar with and has performed due diligence on Mountain Air, and informs the Public Staff it is willing to become EO of the utility systems effective Monday, May 10, 2021.

In its due diligence site inspections, CWSNC has identified the need for immediate extensive system renovations and replacements in order to materially improve the operation, reliability and compliance record of Mountain Air. These immediate extensive improvements will include replacement of inoperable lift station equipment, replacement of malfunctioning or missing lift station pumps, installation of telemetry at major lift stations, and significant water system improvements. These improvements will take a period of time to complete.

CWSNC has agreed to immediately invest its own funds in order to expedite the system improvements and bring the system closer to permit compliance. MAUC posted a \$30,000 bond in Docket No. W-1148, Sub 8, secured by an irrevocable letter of credit from First Citizens Bank. Therefore, CWSNC's advancing the plant improvement capital funds greatly accelerates the necessary renovations and replacements. CWSNC would be fully reimbursed for the expeditious capital renovations, as compared to renovations made only when the Commission receives the bond proceeds. It is expected the costs of the necessary immediate improvements may materially exceed the \$30,000 bond amount.

The wastewater rates currently in effect for Mountain Air were approved by a pass through order issued September 20, 2020, in Docket No. W-1148, Sub 18. MAUC has never received a water rate increase from the rates approved in the certificate of public convenience and necessity proceeding in 2001 in Docket No. W-1148, Sub 0. CWSNC agrees to operate the water and wastewater systems with MAUC's existing rates, subject to true up.

It has become increasingly difficult to obtain qualified entities to operate water and wastewater utilities in emergency situations. Traditional ratemaking approaches have proven inadequate to compensate emergency operators for the substantial financial and management resources required to operate and maintain a water or wastewater utility system owned by another entity. For these reasons, the Public Staff recommends a hybrid approach combining elements of both N.C.G.S. 62-133 and N.C.G.S. 62-133.1, as set forth below.

The Public Staff recommends that CWSNC be authorized to earn a return on its investment in plant and recover the annual depreciation expense related to the investment. The Public Staff maintains that an appropriate return would be the overall rate of return of 7.39% which is the same return approved for CWSNC for its other North Carolina service areas under the general rate case order issued March 31, 2020, in Docket No. W-354, Sub 364, which is based on a capital structure of 50.90% long-term debt with a cost of 5.36%, and 49.10% common equity with an equity return of 9.5%.

The Public Staff further recommends that CWSNC be allowed to earn a margin on its reasonable and prudent operating expense. As CWSNC would receive the annual depreciation funds as its plant investment declines, the operating margin would not apply to the depreciation expense as is normal rate making practice under the operating ratio Montclair method previously approved by the Commission. The Public Staff recommends that a 7.25% operating margin will be fair compensation for CWS given the magnitude and difficulty of its responsibilities as emergency operator of Mountain Air.

CWSNC has more than 40 years experience owning and operating water and wastewater utility systems throughout the North Carolina mountains, including many in high elevations such as Mountain Air. CWSNC is experienced and extremely well qualified and is the appropriate utility to be the EO of Mountain Air.

CWSNC has franchised areas serving 28 service areas in 15 counties in the North Carolina mountains. CWSNC has experience serving as an EO.

CWSNC was appointed by Order dated October 1, 2014, Docket No. W-408, Sub 9, and is currently serving as EO for the three Cross State Development Company water utility systems in Ashe County. CWSNC is also currently serving as the EO, appointed on January 31, 1997, in Docket No. W-296, Sub 12, for the Hardscrabble Plantation wastewater utility system in Durham County. CWSNC was also appointed EO for the Riverbend Estates water utility system in Macon County on May 16, 2017, and served as EO until the Commission's Order dated May 16, 2019, in Docket No. W-354, Sub 358, approving the transfer of the Riverbend Estates water system to CWSNC. In each of these three EO services, CWSNC has provided excellent customer service.

EXHIBIT: A copy of the proposed order is attached as [Exhibit No. P-1](#).

RECOMMENDATION: (Grantmyre) That the Commission issue the proposed order appointing CWSNC the emergency operator of Mountain Air, effective May 10, 2021.

[Back to Agenda](#)

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. W-1148, Sub 20

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of  
Mountain Air Utilities Corporation - ) ORDER APPOINTING EMERGENCY  
Petition for Appointment of ) OPERATOR, AND REQUIRING  
Emergency Operator ) CUSTOMER NOTICE

BY THE COMMISSION: On April 29, 2021, the Public Staff filed a petition pursuant to G.S. 62-116(b), requesting the Commission to issue an order: (1) declaring an emergency, and (2) appointing Carolina Water Service, Inc. of North Carolina (CWSNC), as emergency operator (EO) of the Mountain Air water and wastewater utility systems in Yancey County, North Carolina.

The Public Staff presented this matter at the Commission's Staff Conference on May 3, 2021.

Based upon the Public Staff's Petition and the Commission's records, the Commission makes the following

**FINDINGS OF FACT**

1. By order issued May 18, 2001, in Docket No. W-1148, Sub 0, the Commission granted a certificate of public convenience and necessity to Mountain Air Utilities Corporation (MAUC) to provide water and wastewater utility service in the Mountain Air Community in Yancey County. The water service is provided through a system of deep wells, ground storage and hydropneumatic tanks, and an extensive distribution system in a service area with major elevation gradients. The wastewater service is provided through a collection system including extensive pump stations owned and operated by MAUC, and transported to an interconnection with the Town of Burnsville for bulk wastewater treatment by the Town.

2. The president of MAUC is William R. (Randy) Banks. Mr. Banks has been a stockholder and officer of MAUC since it was incorporated in 2001 and is the principal in the development organization that developed the Mountain Air Community.

### System Permits

3. The Division of Water Resources (DWR) of the North Carolina Department of Environmental Quality (DEQ) is that state agency that now regulates the permitting, operations, and monitoring of wastewater utility systems in North Carolina. DWR was previously a division of the North Carolina Department of Environment and Natural Resources. The Public Water Supply Section (PWSS) of DEQ regulates the permitting, operations and monitoring of water utility systems in North Carolina.

4. DWR issued to MAUC collection system permits for the Mountain Air wastewater collection system, which is comprised of gravity sewer, force mains, and 33 pump stations that discharge to a delivery point for the Town of Burnsville bulk wastewater treatment.

5. The PWSS issued to MAUC water permits. The Mountain Air water utility system has distribution lines to serve approximately 445 residential water customers, 44 metered customers including the Mountain Air Country Club and Golf Course, and other commercial customers. There are currently 441 residential flat rate sewer customers and 21 metered wastewater customers.

### Permit Violations

6. Due to material non-compliance with G.S. 143-215.1 and the wastewater collection permits, MAUC has incurred DWR issued Notices of Violation (NOVs) for operations and reporting violations.

7. The most recent complete DWR inspection of the Mountain Air wastewater collection system was conducted on or before November 3, 2020. The following are excerpts from the inspection report:

“The self-reported sanitary sewer overflow (SSO) 5-Day Reports submitted by Mountain Air Country Club (sic) indicate violations of permit conditions stipulated in the subject permit and North Carolina G.S. 143-215.1. Violations include failing to effectively manage, maintain, and operate the subject collection system so that there is no SSO to the land or surface waters and making an outlet to waters of the State for purposes of G.S. 143-215.1 (a)(1), for which a permit is required.”

8. On September 8, 2020, the wastewater system experienced pump station equipment failure. There was a resulting unlawful discharge of 1000 gallons and a discharge to surface water of 500 gallons. On October 25, 2020, the wastewater system experienced an unlawful discharge of 400 gallons and a discharge to surface waters of 200 gallons.

System Ownership Issues

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

10. The recorded liens against the Mountain Air water and wastewater utility system assets far exceed the MAUC original cost net investment in the water and wastewater utility system assets. The Public Staff has determined that the MAUC rate base is close to zero.

11. With liens reportedly totaling approximately \$15 million against MAUC properties plus accruing interest, there can be no question that a real emergency exists. Due to the ownership issues and the liens against the MAUC property and facilities, the conveyance of the MAUC water and wastewater utility to a new owner will be a very complex and lengthy process.

CWSNC Qualifications

12. CWSNC has more than 40 years experience owning and operating water and wastewater utility systems throughout the North Carolina mountains, including many in high elevations such as Mountain Air. CWSNC is experienced and extremely well qualified and is the appropriate utility to be the emergency operator of the water and wastewater systems at Mountain Air.

13. CWSNC has extensive franchised water and wastewater utility systems in the North Carolina mountains. The following are the CWSNC franchised areas:

Ashe County	Blue Ridge Manor/Ashe Lake/Beaver Creek (EO)
	Blue Ridge Manor/Ashe Lake/Holiday Lane (EO)
	Blue Ridge Manor/Ashe Lake/Nikanor (EO)
Avery County	Elk River
	Linville Ridge
	Ski Country
	Sugar Mountain
Buncombe County	Bent Creek
Caldwell County	Misty Mountain
Cherokee County	Bear Paw

Clay County	The Ridges
Henderson County	High Vista
	Woodhaven
Jackson County	Fairfield Sapphire
	Forest Hills
Macon County	Riverbend Estates
	Watauga Vista
Madison County	Wolf Laurel
McDowell County	Waterglyn
Rutherford County	Fairfield Mountain
	FFM Apple Valley
Watauga County	Chapel Hills
	Crestview Estates
	Hounds Ears
	Powder Horn
	Ski Mountain
Transylvania County	Sherwood Forest
Yancey County	Mt. Mitchell

14. CWSNC was appointed by Order dated October 1, 2014, Docket No. W-408, Sub 9, and is currently serving as EO, at the three Cross State Development Company water utility systems in Ashe County. CWSNC is also currently serving as the EO, appointed on January 31, 1997, in Docket No. W-296, Sub 12, for the Hardscrabble Plantation wastewater utility system in Durham County. CWSNC was also appointed EO for the Riverbend Estate water utility system in Macon County on May 16, 2017, and served as EO until the Commission's Order dated May 16, 2019, in Docket No. W-354, Sub 358, approving the transfer of the Riverbend Estates water system to CWSNC. In each of these three EO services, CWSNC has provided excellent customer service.

15. The Public Staff stated it believes that CWSNC is extremely well qualified to perform the service of emergency operator. CWSNC will operate the Mountain Air water and wastewater utility systems with its existing CWSNC operating staff which operate mountain systems in proximity to Mountain Air. CWSNC will manage the systems with the management staff in North Carolina.



16. The Public Staff has discussed with CWSNC the willingness of CWSNC to become the emergency operator of the Mountain Air utility systems. CWSNC has performed due diligence, is familiar with the Mountain Air systems, and has informed the Public Staff it is willing to become emergency operator of the utility systems effective Monday, May 10, 2021.

#### Investment in System Renovations

17. In its due diligence site inspections, CWSNC identified the need for immediate extensive system renovations and replacements in order to materially improve the operation, reliability, and compliance record of the Mountain Air water and wastewater utility systems. These extensive improvements will include but not limited to replacement of inoperable lift station equipment, replacement of malfunctioning or missing lift station pumps, installation of telemetry at major lift stations, and significant water system improvements. These improvements will take a period of time to complete.

18. CWSNC has agreed to immediately invest its own funds in order to expedite the system improvements and bring the systems closer to permit compliance. MAUC posted a \$30,000 bond in Docket No. W-1148, Sub 8, secured by an irrevocable letter of credit from First Citizens Bank. Therefore, CWSNC's advancing the plant improvement capital funds greatly accelerates the necessary renovations and replacements. CWSNC shall be fully reimbursed for the expeditious capital renovations, as compared to renovations made only when the Commission receives the bond proceeds. The Public Staff reported the costs of the necessary immediate improvements may materially exceed the \$30,000 bond amount.

19. The rates currently in effect for the Mountain Air wastewater system were approved by a pass through order issued September 20, 2020, in Docket No. W-1148, Sub 18. MAUC has never received a water rate increase from the rates approved in the certificate of public convenience and necessity proceeding in 2001. CWSNC has agreed to operate the water and wastewater systems with MAUC's existing rates, subject to true up.

20. The Public Staff has discussed with CWSNC the willingness of CWSNC to become the emergency operator of the Mountain Air utility systems. CWSNC has performed extensive due diligence in the past and again in April, 2021. CWSNC is familiar with the Mountain Air systems, and has informed the Public Staff CWSNC is willing to become emergency operator of the utility systems effective Monday, May 10, 2021.

#### Service Difficulties

21. Among other deficiencies presently existing with respect to the water system is the condition of the water distribution mains causing water outages and

resulting in loss of water service on frequent occasions for extended periods of time. It is necessary for there to be an examination of the well production facilities and the water mains, and reports as to the conditions of the mains and a list of the necessary repairs and replacements.

22. The wastewater collection system consists of 33 pump stations. A working telemetry system must be installed at the six largest lift stations. A number of lift stations have malfunctioned and have overflowed causing releases of raw sewage, permit violations and offensive odors.

23. In recent days, both the water and wastewater systems have been offline resulting in disruptions of several hours in length. The disruptions have become more frequent. These disruptions are occurring when many of the residents are not present, suggesting magnified difficulties when residents return in upcoming spring and summer days. The Mountain Air Country Club has experienced extensive outages.

24. Representatives of the Mountain Air Property Owners Association, Inc. (POA) have been in constant communication with Mr. Banks of MAUC with respect to system deficiencies. Mr. Banks has communicated with the POA and Public Staff, and stated that MAUC has insufficient funds to address service deficiencies and is without means to raise additional capital.

25. The Mountain Air Community consists of permanent as well as many seasonal residents. Within coming weeks many of the seasonal residents will be returning to the Mountain Air community, substantially increasing stress on the systems, and unless delayed improvements and repairs are made on an expeditious basis, past and existing service disruptions will magnify.

#### Real Emergency

26. G.S. 62-116 (b) provides that the Commission, after notice to the owner and operator of a water or wastewater utility franchise, may grant emergency operating authority to any person to furnish water or wastewater utility service to the extent necessary to relieve an emergency upon a finding that a real emergency exists, that the relief authorized is immediate, pressing, in the public interest, and that the person so authorized is able and willing to perform the service. An emergency is defined as "the imminent danger of losing adequate water or sewer utility service of the actual loss thereof."

27. A real emergency exists regarding the Mountain Air water and wastewater utility systems, as MAUC does not have and has no prospect of obtaining the funds for necessary operations, system replacements and upgrades, is in material non-compliance with G.S. 143-215.1, and its water permits and wastewater collection permits, and its customers are in imminent danger of losing adequate water and wastewater utility service.

28. By email to the Commission dated April 5, 2021, Randy Banks, the President of MAUC requested that the Commission appoint an EO for the Mountain Air water and wastewater utility systems. Mr. Banks stated there are many items that need immediate attention and MAUC neither has adequate funds, nor access to adequate funds, to successfully operate, maintain, or make repairs and upgrades to the Mountain Air water and wastewater utility systems.

29. The POA filed with the Commission on April 26, 2021, a letter describing the deferred maintenance, and the significant service deficiencies, including water outages and wastewater leaks. The POA requested the Commission immediately appoint a professional operator as emergency operator for the Mountain Air water and wastewater utility systems.

Appointment of CWSNC as Emergency Operator

30. MAUC, through its President Randy Banks, has advised the Public Staff that it consents to the appointment of CWSNC as the emergency operator of the Mountain Air water and wastewater utility system. CWSNC has agreed to be appointed emergency operator.

31. CWSNC has requested that the Commission's Order appointing CWSNC emergency operator clearly state:

- a. That CWSNC as emergency operator shall not be responsible for, or liable for, any acts, omissions, system operations and maintenance, or system installations, occurring prior to the date of the appointment as emergency operator.
- b. That CWSNC shall have no responsibility for MAUC's handling of customer deposits, if any, or any other obligations or liabilities of MAUC arising from its operation of the water and wastewater utility systems.
- c. That CWSNC shall not be responsible for, or liable for, any acts, omissions, obligations or liabilities of MAUC, Mr. Banks, the owners of any property on which the utility assets are located, or any of them.
- d. That CWSNC as EO be made whole being reimbursed for all capital investment for replacements and upgrades, earn the Commission approved return on CWSNC's capital investments, earn the Commission approved operating margin on CWSNC's reasonable operating expenses, recovering all of CWSNC's reasonable operating expenses as EO.

- e. That there be a true up at the time CWSNC is relieved of its duties.
- f. That CWSNC as emergency operator may petition the Commission at any time to be discharged as the emergency operator, which discharge the Commission shall approve.

The Public Staff stated it fully supports all of these provisions.

32. The recorded liens against the Mountain Air water and wastewater utility system assets far exceed the MAUC original cost net investment in the water and wastewater utility system assets. The Public Staff has determined that the MAUC rate base is close to zero.

33. With liens reportedly totaling approximately \$15 million against MAUC properties plus accruing interest, there can be no question that a real emergency exists. Due to the ownership issues and the liens against the MAUC property and facilities, the conveyance of the MAUC water and wastewater utility to a new owner will be a very complex and lengthy process. It has become increasingly difficult to obtain qualified entities to operate water and wastewater utilities in emergency situations. Traditional ratemaking approaches have proven inadequate to compensate emergency operators for the substantial financial and management resources required to operate and maintain a water or wastewater utility system owned by another entity. For these reasons, the Public Staff recommended a hybrid approach combining elements of both G.S. 62-133 and G.S. 62-133.1, as set forth below.

34. It has become increasingly difficult to obtain qualified entities to operate water and wastewater utilities in emergency situations. Traditional ratemaking approaches have proven inadequate to compensate emergency operators for the substantial financial and management resources required to operate and maintain a water or wastewater utility system owned by another entity. For this reason, the Public Staff recommended a hybrid approach combining elements of both G.S. 62-133 and G.S. 62-133.1, as set forth below.

35. The Public Staff has recommended that CWSNC be authorized to earn a return on its investment in plant and the annual depreciation expense related to the investment. The Public Staff stated it believes that an appropriate return would be the overall rate of return of 7.39% approved for the CWSNC Service Areas by Order issued March 31, 2021, in Docket No. W-354, Sub 364. The 7.39% rate of return is based upon a capital structure of 50.9% long-term debt with a cost of 5.36%, and 50.90% common equity with a return on equity of 9.5%.

36. The Public Staff has also recommended that CWSNC be allowed to earn a margin on its reasonable and prudent operating expenses. As CWSNC would receive the annual depreciation funds as its plant investment declines, the operating margin would not apply to the depreciation expense as is normal rate making practice under the operating ratio Montclair method previously approved by the Commission. The Public Staff recommended that a 7.25% operating margin will be fair compensation for CWSNC given the magnitude and difficulty of its responsibilities as emergency operator of the Mountain Air systems.

37. The Public Staff has recommended based upon the ratemaking approach described above, that the Commission approve the appointment of CWSNC as emergency operator of the Mountain Air water and wastewater systems at the existing MAUC rates, subject to true up, which CWSNC has agreed to.

### CONCLUSIONS

Based upon the foregoing and the recommendations of the Public Staff, the Commission concludes an emergency exists for the Mountain Air water and wastewater utility systems, which are in imminent danger of losing adequate water and wastewater utility service. The Commission further concludes that CWSNC, should be appointed emergency operator.

IT IS, THEREFORE, ORDERED as follows:

1. That CWSNC is hereby appointed as emergency operator of the Mountain Air water and wastewater utility system effective May 10, 2021 (the Effective Date). All expenses associated with the operation of the Mountain Air water and wastewater utility systems accruing or relating to the period up to the Effective Date shall be MAUC's sole responsibility. All such expenses accruing or relating to the period commencing on and after the Effective Date shall be the emergency operator's sole responsibility.

2. That a copy of the Notice to Customers, attached as Appendix A, shall be mailed by MAUC with sufficient postage or by electronic delivery to all the water and wastewater utility systems customers, no later than three days after the date of this Order, and that MAUC submit to the Commission the attached Certificate of Service properly signed and notarized not later than 10 days after the date of this Order.

3. That the Schedule of Rates, being the current rates of MAUC, is approved for CWSNC as emergency operator, on a provisional basis for water and wastewater utility service provided by CWSNC as emergency operator, subject to true up if CWSNC as emergency operator has not recovered its costs and approved returns, or has over-recovered.

4. That the of the rate of return on capital investments described in Finding of Fact no. 35, and the operating margin described in Finding of Fact no. 36 are approved.

5. That the following provisions are adopted by this Order:

- a. That the emergency operator shall maintain full records of receipts and expenses and shall file with the Commission and Public Staff, by the end of the subsequent month, a summary financial report on a quarterly basis.
- b. That the emergency operator shall have charge of the daily operation of the MAUC water and wastewater utility systems, and the emergency operator's duties and responsibilities shall include, among others, the following:
  - (i) Regular inspections and testing of the Mountain Air water and wastewater utility systems;
  - (ii) Billing of all customers and collection of bills;
  - (iii) Routine and emergency maintenance and repair;
  - (iv) System renovations and additions necessary to maintain adequate water and wastewater utility service;
  - (v) Quarterly accounting to the Utilities Commission and the Public Staff of all rates collected, expenses incurred, checks written, and all monies spent;
  - (vi) Providing a telephone number to customers for routine and emergency calls and a mailing address; and
  - (vii) Filing all required reports with PWSS and DWR.
- c. That the emergency operator may contract with any person to carry out any of the duties necessary for operation and repair of the wastewater utility system, but the emergency operator shall have the ultimate, sole responsibility to see that such duties are carried out.
- d. That the emergency operator in the performance of its duties, shall be free to seek assistance from the customers of the water and wastewater utility systems, contractors, engineers, attorneys, and such other persons as may be necessary for the performance of its duties and responsibilities.

- e. That the emergency operator shall, when it becomes necessary in the performance of its duties, seek the assistance of the PWSS and DWR of DEQ, the North Carolina Utilities Commission, the Public Staff of the Utilities Commission, and the Yancey County Health Department.
- f. That the emergency operator shall collect from the customers of the water and wastewater utility systems such rates, assessments, and surcharges as may be approved by the North Carolina Utilities Commission and shall be fully authorized to bill and collect those rates, assessments, and surcharges and to disburse those funds as may be necessary to provide safe, reliable, and adequate water and wastewater utility service to the customers. Any customer who fails to pay the bill(s) authorized by this paragraph shall be disconnected by the emergency operator as provided by the orders, rules, and regulations of the North Carolina Utilities Commission.
- g. Subject to any true up for under collection or over collection required by the Commission, all revenues received by the emergency operator from the date of this Order in connection with its operation of the MAUC water and wastewater utility systems, not used in payment of operating expenses, shall be the sole property of the emergency operator.
- h. That the emergency operator shall be entitled to all available records relating to the water and wastewater utility systems and those records shall include, but not be limited to, a list of customer names, addresses, and billing records.
- i. That the emergency operator shall keep records of all monies collected through the rates, assessments (if any), and surcharges (if any), and all monies expended in the operation of the water and wastewater utility systems. In order to protect the customers' interests in the water and wastewater utility systems, the emergency operator is required to keep a separate record of all monies and assessments collected from customers and expended on improving and upgrading the wastewater utility system, and the cost of the labor associated with those improvements, whether performed by the emergency operator or contractor hired by the emergency operator.
- j. The emergency operator shall account for any funds advanced by it for the renovations, upgrades, replacements, and operation of the water and wastewater utility systems.

- k. That the emergency operator shall be responsible for and pay only those liabilities incurred by the emergency operator on and after the Effective Date of the appointment of the emergency operator. Those liabilities shall be defined as the liabilities arising from the emergency operator's operation of the Mountain Air water and wastewater utility systems pursuant to Commission Order. The emergency operator shall not be responsible for, or liable for, any acts, omissions, system operations and maintenance, or system installations, occurring prior to May 10, 2021, the effective date of the appointment of CWSNC as emergency operator. The disbursements by the emergency operator shall be made from the separate emergency operator accounts including bank accounts set up by the emergency operator; the emergency operator shall account for any funds advanced by it for the operations.
- l. That the emergency operator shall have no responsibility for MAUC's handling of customer deposits, if any, or any other obligations or liabilities of MAUC arising from its operation of the water and wastewater treatment systems. The emergency operator shall not be responsible for, or liable for, any acts, omissions, obligations, commitments or liabilities of Randy Banks or MAUC.
- m. That the emergency operator may petition the Commission at any time to be discharged as the emergency operator of the Mountain Air water and wastewater utility systems, which discharge the Commission shall approve. Prior to its discharge, the emergency operator shall provide an acceptable accounting of the Utilities Commission of all monies collected and disbursed during its tenure as emergency operator, as well as the amounts due and owing the emergency operator at the time of its discharge for its services performed as emergency operator. The emergency operator filing a petition for discharge shall also mail a copy of the petition to the DWR and PWSS of DEQ.
- n. That this docket shall remain open for further motions, reports, etc., of the emergency operator, DWR, PWSS, the Public Staff, and for further orders of the Commission.
- o. Revenues received from customers for wastewater utility service rendered prior to May 10, 2021, the effective date of the appointment of the emergency operator shall be the property of MAUC. Any customer bills which relate to wastewater utility service provided both before and on or after the Effective Date of May 10, 2021, shall be



allocated between MAUC and the emergency operator. If the emergency operator receives payment in the form of a check made out to MAUC, for water and wastewater utility services provided after the Effective Date, MAUC shall endorse that check over to the emergency operator to enable it to make the necessary allocations described above.

6. MAUC shall within 20 days of the Effective Date, refund all customer deposits, if any, plus accrued interest.

7. That the following items of information shall be made available to CWSNC:

- a. Customer information for each residence connected to the system, containing at a minimum, customer name, service address, billing address, contact phone numbers (home and work), and billing records.
- b. Copy of latest electrical power bill for each electric service location needed for transfer of service.
- c. Copy of each system plans and specifications.
- d. Copies of all monitoring reports and evaluations completed by MAUC or its certified operator for the past 36 months.
- e. The names, addresses, and telephone number of all vendors providing materials and supplies for the wastewater system operations.
- f. Copies of all 2020 (if available) property tax bills.
- g. Copies of all correspondence with DWR or PWSS including NOV's for the past five years.

8. That the Public Staff shall file a report with the Commission within one year from the issuance date of this Order. This report shall include: (1) a summary description of the improvements made by CWSNC to the water and wastewater utility systems and the associated costs; (2) a review of correspondence from customers, if any; and (3) a summary of the financial reports filed by CWSNC to date.

ISSUED BY ORDER OF THE COMMISSION.

This the \_\_\_\_ day of May, 2021.

NORTH CAROLINA UTILITIES COMMISSION

\_\_\_\_\_, Deputy Clerk

**CERTIFICATE OF SERVICE**

I, \_\_\_\_\_, mailed with sufficient postage or electronically delivered to all affected customers a copy of the Notice to Customers issued by the North Carolina Utilities Commission in this Docket No. W-1148, Sub 20, and such Notice to Customers was mailed or electronically delivered by the date specified in the Order dated May \_\_\_\_, 2021.

This the \_\_\_\_ day of May, 2021.

By: \_\_\_\_\_  
Signature

Mountain Air Utility Company  
Name of Utility Company

The above named Applicant, \_\_\_\_\_, personally appeared before me this day and, being first duly sworn, says that the required copy of the Commission Notice to Customers was mailed or electronically delivered to all affected customers, as required by the Commission Order dated in Docket No. W-1148, Sub 20.

Witness my hand and notarial seal, this the \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Address

(SEAL) My Commission Expires:

\_\_\_\_\_  
Date

APPENDIX A

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

**NOTICE TO CUSTOMERS  
DOCKET NO. W-1148, SUB 20  
BEFORE THE NORTH CAROLINA UTILITIES COMMISSION**

Notice is hereby given that the North Carolina Utilities Commission (Commission) has appointed Carolina Water Service, Inc. of North Carolina (CWSNC) as emergency operator for the Mountain Air water and wastewater utility systems in the Mountain Air Development in Yancey County, North Carolina. Randy Banks, the President of Mountain Air Utilities Corporation (MAUC) requested the Commission appoint an emergency operator as MAUC did not have adequate funds to operate, maintain, repair and renovate the water and wastewater utility systems, and did not have access to the necessary funds.

The Mountain Air Property Owners Associations, Inc. (POA) filed with the Commission on April 26, 2021, a letter describing the deferred maintenance, and the significant service deficiencies, including water outages and wastewater leaks. The POA requested the Commission immediately appoint a professional operator as emergency operator for the Mountain Air water and wastewater utility systems.

CWSNC has more than forty years experience owning and operating water and wastewater utility systems in the North Carolina Mountains. CWSNC currently provides water and/or wastewater utility service to 28 service areas in 15 counties in the North Carolina Mountains. The Public Staff recommended that CWSNC be appointed emergency operator.

In its due diligence site inspections, CWSNC identified the need for immediate extensive system renovations and replacements in order to materially improve the operation, reliability and compliance record of the Mountain Air water and wastewater utility systems. These immediate extensive improvements will include but are not be limited to replacement of inoperable lift station equipment, replacement of malfunctioning or missing lift station pumps, installation of telemetry at major lift stations, and significant water system improvements. These improvements will take a period of time to complete.

CWSNC will operate the Mountain Air water and wastewater utility systems with the Commission approved existing MAUC rates, subject to true up. CWSNC will begin as emergency operator on Monday, May 10, 2021. The telephone number to call CWSNC for service issues and billing questions is 800-525-7990.

Customers may review the complete Commission Order dated May \_\_, 2021, appointing CWSNC emergency operator on the Commission's website ([www.ncuc.net](http://www.ncuc.net)). Then click on Dockets, then for Docket No. enter W-1148 Sub 20, then click on Documents, then click on Order dated May \_\_, 2021.

ISSUED BY ORDER OF THE COMMISSION.

This the \_\_\_\_ day of May, 2021.

NORTH CAROLINA UTILITIES COMMISSION

Kimberley A. Campbell, Chief Clerk

[Back to Agenda](#)