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July 19, 2022

Ms. A. Shonta Dunston  
Chief Clerk  
North Carolina Utilities Commission  
430 N. Salisbury Street, Room 5063  
Raleigh, NC 27603

Via Electronic Submittal

**Re: In the Matter of Application by Currituck Water and Sewer, LLC and Sandler Utilities at Mill Run, LLC for Authority to Transfer the Sandler Utilities at Mill Run Wastewater System and Public Utility Franchise in Currituck County, NC and for Approval of Rates  
Docket Nos. W-1130, Sub 11, and W-1333, Sub 0  
Corrected Joint Proposed Order Approving Transfer, Approving Rates, and Requiring Customer Notice**

Dear Ms. Dunston:

On behalf of Sandler Utilities at Mill Run, LLC and Currituck Water and Sewer, LLC, I herewith submit for filing in the above referenced dockets, the Corrected Joint Proposed Order Approving Transfer, Approving Rates, and Requiring Customer Notice.

The difference in the attached Corrected Joint Proposed Order and the Joint Proposed Order filed on 7-18-2022 in the dockets is that in the Corrected Joint Proposed Order, Karen Kemerait's name has been removed from "APPEARANCES". This correction has been made because Commissioner Karen Kemerait did not participate in the evidentiary hearing or any aspect of the proceeding after her appointment to the Commission. It would be inappropriate to show her as counsel on the case as the case was heard and decided after she became a Commissioner.

The Corrected Joint Proposed Order will also be submitted to [Briefs@ncuc.net](mailto:Briefs@ncuc.net) in native format.

OFFICIAL COPY

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If you have any questions concerning this filing, please let me know. Thank you and your staff for your assistance.

Sincerely,

*/s/ David T. Drooz*

David T. Drooz  
Attorney for  
Sandler Utilities at Mill Run, LLC

pbb

Attachment

cc: All parties and counsel of record  
NC Public Staff

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. W-1130, SUB 11  
DOCKET NO. W-1333, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of  
Application by Currituck Water and  
Sewer, LLC, 4700 Homewood Ct.,  
Suite 108, Raleigh, North Carolina,  
and Sandler Utilities at Mill Run, LLC,  
448 Viking Drive, Suite 220, Virginia  
Beach, Virginia for Authority to  
Transfer the Sandler Utilities at Mill  
Run Wastewater System and Public  
Utility Franchise in Currituck County,  
North Carolina, and for Approval of  
Rates

**CORRECTED  
JOINT PROPOSED ORDER  
APPROVING TRANSFER,  
APPROVING RATES, AND  
REQUIRING CUSTOMER  
NOTICE**

**HEARD:** Tuesday, February 2, 2022, at 1:30 p.m. and 4:30 p.m., by use of  
the Webex electronic platform, and

Wednesday, June 8, 2022, at 10:00 a.m., Commission Hearing  
Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh,  
North Carolina

**BEFORE:** Commission Chair Charlotte A. Mitchell, Presiding; and  
Commissioners ToNola D. Brown-Bland, Daniel G.  
Clodfelter, Kimberly W. Duffley, Jeffrey A. Hughes, and Floyd  
B. McKissick, Jr.

**APPEARANCES:**

For Sandler Utilities at Mill Run, LLC:

David T. Drooz  
Fox Rothschild LLP  
434 Fayetteville Street, Suite 2800  
Raleigh, North Carolina 27601

For Currituck Water and Sewer, LLC:

Edward S. Finley, Jr.  
Edward S. Finley, Jr. PLLC  
2024 White Oak Road  
Raleigh, North Carolina 27608

Dwight W. Allen  
Britton Allen  
Brady Allen  
Allen Law Offices, PLLC  
4030 Wake Forest Rd. # 115  
Raleigh, NC 27609

For the Using and Consuming Public:

Gina C. Holt and John Little, Staff Attorneys, Public Staff – North Carolina Utilities Commission, 4326 Mail Service Center, Raleigh, North Carolina 27699-4300

BY THE COMMISSION: On May 20, 2021, Currituck Water and Sewer, LLC, (CWS) and Sandler Utilities at Mill Run, LLC, (Sandler) filed a joint application for authority to transfer the assets of the Sandler wastewater system and public utility franchise in Currituck County, North Carolina, from Sandler to CWS, and for approval of proposed rates (Application).

On November 18, 2021, the Commission issued an Order Scheduling Hearings, Establishing Discovery Guidelines, and Requiring Customer Notice.

On November 30, 2021, Sandler filed a Certificate of Service stating that the public notice had been provided in accordance with the Commission's November 18, 2021, Order.

On January 24, 2022, Eagle Creek residents filed two petitions supporting either gravity replacement or upgrading the existing vacuum collection system.

On February 2, 2022, the Commission held two sessions of a public witness hearing via Webex. The Commission received testimony and exhibits from the utility's customers, Rhonda Klussmann, Trudy Elder, Gary Lickfeld, Tammy Green, Greg Ewan, Susan Powers, David Shepherd, and James Hutson.

On February 4, 2022, CWS filed the direct testimony of Michael J. Myers, the Vice-President, Secretary, and Treasurer of CWS.

On the same day, Sandler filed the direct testimony of Brittney Willis, a senior project manager for L.M. Sandler & Sons, an affiliate of Sandler.

On February 8, 2022, the Commission entered an order requiring CWS and Sandler to each file, separately, a verified report addressing all customer service and service quality complaints expressed during the public witness hearing held on February 2, 2022, requiring copies of the Consent Judgment between the State of North Carolina, ex rel. North Carolina Department of Environmental Quality (State) and Sandler, requiring an explanation of the status of the order on the Eagle Creek wastewater treatment plant issued by environmental regulators, and requiring the Public Staff to file a verified response on the CWS and Sandler's reports.

On February 18, 2022, Sandler filed copies of the Consent Judgment and Amended Consent Judgment between the State and Sandler.

On March 2, 2022, The Public Staff filed the direct testimonies of Phat H. Tran, a public utilities financial analyst in the Economic Research Division of the Public Staff; Iris Morgan, a financial analyst in the Water Section of the Public Staff Accounting Division; and D. Michael Franklin, public utilities engineer with the Water, Sewer, and Telephone Division of the Public Staff. On the same day, the Public Staff also filed the joint direct testimony of David May and Robert Tankard, regional supervisor and assistant regional supervisor of Water Quality Regional Operations Section in the Washington Regional Office of the North Carolina Department of Environmental Quality, Division of Water Resources, respectively.

On March 4, 2022, Sandler and CWS each filed their respective verified Reports on Customer Comments from the February 2, 2022, public hearing. The Public Staff filed Verified Responses to these reports on March 11, 2022.

On March 22, 2022, Sandler filed rebuttal testimony of Brittney Willis and a verified Supplement to its Report on Customer Comments.

On March 31, 2022, CWS filed rebuttal testimony of Mr. Myers; William Freed, owner of Envirotech Unlimited Construction Services LLC and Envirotech of North Carolina, Inc.<sup>1</sup>; Mark Bissell, a licensed engineer with Bissell Professional Group; Zach Basnight, a project manager for Basnight Construction; Paul Beaumont, Vice Chairman of the Currituck County Board of Commissioners; Robert Hanig, N.C. State Representative for the Northeastern District and former Currituck County Commissioner Chairman; Gary Lickfield, a resident of Eagle Creek; and Tracy Miller, an area manager for Envirolink, Inc.

On May 4, 2022, Sandler filed corrected rebuttal testimony of Brittney Willis.

On May 6, 2022, the Commission issued an order continuing the expert witness hearing to June 8, 2022.

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<sup>1</sup> Mr. Freed's business is variously referred to as Envirotech and Enviro-Tech in testimony.

On June 6, 2022, CWS, Sandler, and the Public Staff filed a Settlement Agreement and Stipulation (Settlement) agreeing to certain terms and conditions of the proposed transfer.

Also on June 6, 2022, the Public Staff filed the supplemental testimony and exhibit of Ms. Morgan and supplemental testimony of Mr. Franklin in support of the Settlement.

On June 7, 2022, CWS filed supplemental and settlement testimony of Mr. Myers.

On June 7, 2022, the Commission issued its Order Excusing Certain Witnesses from Expert Witness Hearing, which excused all witnesses except CWS witness Myers and Public Staff witnesses Franklin and Morgan and received the excused witnesses' prefiled testimony and exhibits into the record.

On June 8, 2022, the evidentiary hearing was held at the Commission Hearing Room in Raleigh, North Carolina.

On June 13 and June 17, 2022, Sandler filed three late-filed exhibits pursuant to Commission request.

On the basis of the Application, the testimonies and exhibits, and the entire record in this proceeding, the Commission makes the following:

### **FINDINGS OF FACT**

1. Sandler holds a Certificate of Public Convenience and Necessity pursuant to Commission order issued on September 14, 1999, in Docket No. W-1130, Sub 0, to provide wastewater utility service to approximately 420 residential customers in the Eagle Creek subdivision as well as to the neighboring Mill Run Golf and Country Club ("Mill Run") and Moyock Middle School in Currituck County, North Carolina.

2. Sandler's Eagle Creek wastewater system (the "Eagle Creek Wastewater System" or the "System") is comprised of (1) a vacuum collection system, (2) a refuse spray irrigation system for the Mill Run golf course, (3) an infiltration storage pond, (4) an irrigation pond, and (5) a 350,000 gallons per day (gpd) wastewater treatment plant that is currently limited to 175,000 gpd of flow.

3. Sandler is authorized to operate the wastewater treatment system at Eagle Creek by the North Carolina Department of Environmental Quality (DEQ), Division of Water Resources (DWR) pursuant to a permit originally issued April 12, 1997 and renewed on August 4, 2021 (permit no. WQ0014306).

4. Sandler also holds a DWR permit (permit no. WQCS00290), originally issued on June 30, 2005 and more recently renewed on May 2, 2013, for operation of the vacuum collection system. The current permit has expired, but Sandler has filed to renew it and is awaiting issuance of a new permit. The current permit is administratively continued until such time as a new permit is issued.

5. Although Sandler owns the Eagle Creek Wastewater System, it has always contracted with third parties to operate the System. Up to 2020, the System was operated by William Freed d/b/a Enviro-Tech with the exception of the refuse spray irrigation system, including effluent disposal operations, which is operated by Mill Run pursuant to a contract with Sandler.

6. Enviro-Tech's operations were acquired by Envirolink, Inc., in February 2020, although Envirolink used former Enviro-Tech personnel to operate the Eagle Creek Wastewater System until on or about September 6, 2020 and did not formally enter into a Utility Management Service Agreement with Sandler until January 6, 2021.

7. The vacuum collection system has a history of problems, including significant outages and overflows beginning in September 2020. In response, from 2020 through March of 2022 Sandler has made investments of more than \$686,000 to improve the System.

8. In response to the problems, DWR issued notices of violation and notices of intent to enforce and assessed civil penalties.

9. On March 10, 2021, DEQ filed a complaint against Sandler in Currituck County Superior Court regarding the outages and overflows. The court entered a Consent Judgment on July 1, 2021, which required Sandler to take certain actions. After additional problems arose, DEQ asked the court to impose contempt sanctions on Sandler for failing to abide by the terms of the Consent Judgment. The court did not find Sandler in contempt and instead ordered the parties to attempt to fashion a better framework for improved performance. As a result, the Consent Judgment was amended on December 28, 2021, to add certain requirements, including that Sandler obtain a new, independent engineering evaluation. The independent engineer, Century Engineering, filed its report dated February 28, 2022.

10. Sandler has made significant efforts and investment to comply with the Consent Judgment and the Amended Consent Judgment.

11. The System performance has improved since December of 2021.

12. CWS and Sandler entered into an Asset Purchase Agreement (APA) as amended on April 14, 2021, for CWS to purchase from Sandler the Eagle Creek Wastewater System for the purchase price of \$250,000.00, plus capital costs paid by Sandler between the APA execution date and the closing,

provided that such costs are approved by CWS and the Commission, plus up to \$88,900.00 for connection fees from new customers to be added from the Fost and future Flora communities.

13. The Public Staff initially calculated Sandler's original cost net investment to be \$348,499.00 and opposed purchase price additions of Fost and Flora residents because, in their opinion, such additions do not directly benefit the Eagle Creek Wastewater System customers. CWS's opinion is that the addition of customers in Fost and Flora increases the customer base producing greater economies of scale that benefit the existing customers.

14. In the Settlement filed with this Commission on June 7, 2022, the Public Staff, CWS, and Sandler agreed to a purchase price of \$613,623 for purposes of this proceeding. This amount does not include any additional purchase price of up to \$88,900 that CWS has agreed to pay to Sandler for future connections at the Fost and Flora subdivisions, although CWS remains obligated to make those Fost and Flora connection fee payments of up to \$89,900.00 to Sandler under the terms of the APA and may request including this as rate base in future proceedings. The Commission finds the following purchase price, as provided in the Settlement, is reasonable:

Purchase Price	\$250,000
Post April 2021 Plant Additions	\$413,590
Post April 2021 Plant Additions Accumulated Depreciation	(\$49,967)
Post April 2021 Net Plant in Service	\$363,623
<b>Total Purchase Price</b>	<b>\$613,623</b>

15. The Settlement also provides that the rate base for the System should be \$424,779, which is the lesser of the purchase price and original cost net investment. This amount of rate base may be increased by any reasonable and prudent costs that may be incurred by Sandler prior to closing for a new control panel for the vacuum system. The \$424,779 of rate base does not include inventory purchased by Sandler that would be deemed Materials and Supplies in Working Capital. Any post-transfer rate case brought by CWS may include in rate base the reasonable and prudent amounts of Materials and Supplies, as part of Working Capital, and any reasonable used and useful investment by Currituck in the Control Panel. The Commission finds these Settlement terms for rate base to be reasonable.



16. The Public Staff also initially recommended that the Commission hold the joint Application in abeyance until Sandler either satisfies the terms of the Consent Judgment and satisfies any related DWR legal proceedings or joins CWS as a defendant and obtains a court order that makes the Consent Judgment binding on CWS. In the Settlement, the parties have agreed to a second amendment to the Consent Judgment wherein CWS will have responsibility for environmental compliance once it acquires the System and the associated DWR permits. CWS will also have responsibility for making interim and long-term System improvements, reporting to regulatory authorities, and responding promptly to customer complaints.

17. The Commission finds that entry of the Second Amended Consent Judgment attached to the Settlement is a reasonable condition for the transfer.

18. The Public Staff also initially recommended that a bond of \$1 million be obtained by CWS, whereas CWS maintains that a \$1 million bond requirement is excessive in light of its commitment to upgrading and potentially replacing much of the System.

19. The Settlement specified that CWS will post a bond or letter of credit in the amount of \$650,000, subject to Commission acceptance and approval prior to closing. The Commission approves as reasonable a bond or letter of credit amount of \$650,000 for CWS to acquire the System.

20. CWS has not requested a rate increase for its wastewater services, and the current Commission-approved connection charges and monthly sewer rates will remain in effect:

Flat Rate Residential Sewer Service:	\$ 52.60
Mill Creek Golf Club:	\$ 364.67
Moyock Middle School:	\$ 884.20
Tap-on fees:	
Residential:	\$3,000 per residence
Commercial:	\$3,000 per REU (360 gpd)

21. CWS will not request a rate increase until the New System Upgrade Plan has been implemented.

22. CWS has proposed new reconnection charges, which the Commission finds reasonable:

Next-day restore:	\$ 35
Same-day restore:	\$ 55
After-hours restore:	\$100

23. Pursuant to the Settlement, CWS will file with the Commission and DEQ a New System Upgrade Plan and shall provide status reports no later than March 31, June 30, September 30, and December 31 of each calendar year. Such reports will contain documentation sufficient to verify that all elements of the Interim Service and Restoration Plan, as will be required by the Second Amended Consent Judgment, have been completed during the prior quarter and status related to the execution of the New System Upgrade Plan. Such status reports will document the occurrence of any Sanitary Sewer Overflow (SSO) regardless of volume, actual cost versus budgeted cost, estimated total project cost, and updated estimated completion date for each activity. If a reportable SSO or material system or equipment failure occurs and upon request from DWR, CWS will submit status reports at the end of each calendar month. These status reports shall be submitted via e-mail to David May or his successor at DWR and shall be filed with the Commission.

24. Pursuant to the Settlement, CWS shall also file for Commission approval its agreement with Envirolink pursuant to N.C.G.S. § 62-153 prior to closing.

25. The Commission finds that the Settlement Agreement and Stipulation is reasonable, and the Commission approves its terms in their entirety.

26. CWS has the technical, managerial, and financial capacity to own and operate the Eagle Creek Wastewater System.

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. 1 - 6**

The evidence for these findings of fact is contained in the Application, the Commission's records, and the testimony of CWS witness Myers and Sandler witness Willis. This information provides an historical context for the subsequent operational and regulatory events that have occurred from September of 2020 to the close of hearing.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. 7 - 11

The evidence for these findings of fact is contained in the Application, the Commission's records, The Amended Consent Judgment, and the testimony and exhibits of CWS witness Myers, Sandler witness Willis, Public Staff witness Franklin, and Public Staff DWR witnesses May and Tankard, the additional CWS rebuttal witnesses and the witnesses testifying at the February 2, 2022, hearings.

In September of 2020 the wastewater collection system at Eagle Creek experienced a catastrophic failure, followed by additional failures, operational problems, and permit noncompliance throughout that fall and calendar year 2021. These problems have caused serious hardship for customers as well as environmental hazards.

Sandler responded by ordering repair and upgrade parts for the System, some of which were not immediately available. Sandler also arranged for onsite technical assistance from vacuum system suppliers AirVac and FloVac.

DWR responded to customer complaints in this timeframe by inspecting the System. As described in the Amended Consent Judgment, DWR issued a Notice of Violation (NOV) on October 7, 2020, for sewage overflows and System malfunctions occurring in September and October of 2020. DWR assessed a \$62,517.96 civil penalty in connection with that NOV. DWR issued three more NOVs from November of 2020 through January of 2021 in response to further problems with the System.

On March 4, 2021, DWR filed an injunctive action against Sandler in Currituck County Superior Court, docket number 21 CVS 78. That action was initially resolved with a Consent Judgment entered by the court on July 1, 2021. Sandler made considerable efforts to comply with the Consent Judgment and improve the operation of the System. The efforts included providing on-site training for the system operator's employees, investment in physically relocating controllers outside of pits to improve performance, replacement of unreliable equipment, stocking of replacement parts, and detailed maintenance schedules.

Notwithstanding those efforts, additional sewage overflows occurred in October and November of 2021. This led DWR to file a show cause motion with the court, raising the possibility of civil or criminal contempt sanctions against Sandler. The court directed the parties to submit a modified consent judgment, and on December 28, 2021, an Amended Consent Judgment was entered by the court. The Amended Consent Judgment added new requirements, including better communications with residents, a compliance log, an independent engineering evaluation, development of a New System Upgrade Plan, and appointment of a DWR-approved independent specialist to provide on-site consultation and a report on operation of the vacuum collection system. Sandler witness Willis stated in her prefiled direct testimony that the utility was complying

with the Amended Consent Judgment, and also that the System was achieving improved operational reliability.

In corrected rebuttal testimony filed on May 4, 2022, witness Willis stated that since 2020 Sandler had invested \$686,564 in the System – a substantially larger amount than the Public Staff was recognizing as the rate base amount. At hearing, CWS witness Myers testified as to the effectiveness of 24-hour per day staffing and a new monitoring system. Public Staff witness Franklin testified that there has been significant operational improvement since December of 2021, that the System was stable, and that residents served by the System reported that it had been performing well since December of 2021.

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. 12 – 15**

The evidence for these findings of fact is contained in the Application, the Commission's records, the Asset Purchase Agreement dated April 14, 2021, the Settlement, including its Exhibit I, and the testimony and exhibits of CWS witness Myers, Sandler witness Willis, and Public Staff witnesses Morgan and Franklin.

The Asset Purchase Agreement provides in Article IV that CWS shall pay to Sandler a purchase price for the Eagle Creek Wastewater System consisting of \$250,000.00; plus capital costs paid by Sandler for renewal, replacement, repairs and upgrades of the System from the APA execution date to the closing date, provided that such costs are approved by CWS and the Commission; plus up to \$88,900.00 to be paid after closing for future connection fees to be received from new customers added in the Fost and Flora communities.

For regulatory purposes, the Commission must determine both the purchase price and the net plant in service at the time of transfer. CWS has agreed that it will not seek a plant acquisition adjustment for the Eagle Creek System. Normally the rate base for the acquiring utility will be derived from the lower of purchase price or net plant in service at the time of transfer, and the Commission finds that approach is reasonable in the present case.

Public Staff witness Morgan filed direct testimony that calculated Sandler's net plant in service through January 31, 2022, as \$398,499. She further indicated that this amount is subject to change for reasonable plant additions made through the date of closing on the transfer. Witness Morgan opposed including the \$88,900 component in purchase price because those new connections have not yet been made and they would not directly benefit Eagle Creek customers.

In her corrected rebuttal testimony, Sandler witness Willis testified that \$96,000 of the disallowances recommended by the Public Staff were improper because the capital investments by Sandler were reasonable and prudent. She noted that Sandler was also planning an additional of \$70,000 for a control panel. She also maintained that the \$88,900 for future Fost and Flora connections was appropriate to include in the purchase price because (1) it was a contractual

obligation in the Asset Purchase Agreement, (2) it would benefit Eagle Creek customers due to the economies of scale that CWS would obtain from jointly operating multiple systems, as explained by CWS witness Myers, and (3) the Commission has recognized future connection fees as part of the purchase price in other utility transfer proceedings.

The Public Staff, CWS, and Sandler reached agreement for settlement purposes on a purchase price of \$613,623 for purposes of this proceeding. The Commission finds the following purchase price, as provided in the Settlement, is reasonable:

Purchase Price	\$250,000
Post April 2021 Plant Additions	\$413,590
Post April 2021 Plant Additions Accumulated Depreciation	(\$49,967)
Post April 2021 Net Plant in Service	\$363,623
<b>Total Purchase Price</b>	<b>\$613,623</b>

The resolution of the purchase price is relevant even where the dollar value of net plant in service is lower because the Asset Purchase Agreement terms require Commission approval of capital costs incurred by Sandler between the Asset Purchase Agreement date and the closing date. The Commission accepts as reasonable the negotiated settlement purchase price of \$613,623 because it reflects known and needed capital investment made by Sandler between the Asset Purchase Agreement date and the Settlement date, net of accumulated depreciation.

The \$613,623 purchase price does not include any additional purchase price of up to \$88,900 that CWS has agreed to pay to Sandler for future connections at the Fost and Flora subdivisions. Under the terms of the Asset Purchase Agreement, that amount does not require Commission approval to be part of the contractual purchase price. As the parties have agreed in the Settlement, CWS remains obligated to make those Fost and Flora connection fee payments of up to \$89,900 to Sandler under the terms of the Asset Purchase Agreement.

The Settlement also provides that the rate base for the System should be \$424,779, which is the lesser of the purchase price and original cost net investment. The \$424,779 may be increased by any reasonable and prudent costs that are incurred by Sandler prior to closing, such as a new control panel for the vacuum system. Nor does the \$424,779 of base rate include inventory purchased by Sandler that would be deemed Materials and Supplies in Working Capital. Any post-transfer rate case brought by CWS may include in rate base the reasonable and prudent amounts of Materials and Supplies, as part of Working Capital, and any reasonable used and useful investment by CWS in the

control panel or other assets. The Commission finds these Settlement terms for rate base to be reasonable.

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. 16 – 17**

The evidence for these findings of fact is contained in the Application, the Commission's records, the Settlement, including its Exhibit II, and the testimony and exhibits of CWS witness Myers, Sandler witness Willis, and Public Staff witness Franklin.

Public Staff witness Franklin recommended in prefiled direct testimony that the Commission hold the Application in abeyance until Sandler either satisfies the terms of the Consent Judgment and satisfies any related DWR legal proceedings or joins CWS as a defendant and obtains a court order that makes the Consent Judgment binding on CWS. In the Settlement, the parties have agreed to a second amendment to the Consent Judgment wherein CWS will have responsibility for environmental compliance once it acquires the System and the associated DWR permits. The Second Amended Consent Judgment as presented in Exhibit II to the Settlement will impose rigorous requirements on CWS, including prevention of sewer overflows, reporting of material system failures, prompt responses to resident complaints, an operator training plan, an Interim Service and Restoration Plan, a New System Upgrade Plan along with a report on its completion, and other provisions. The Second Amended Consent Judgment will be enforceable by judicial contempt sanctions. Public Staff witness Franklin testified that the terms of the Second Amended Consent Judgment would provide adequate customer protections and support his opinion that the transfer to CWS is in the public interest.

As reflected in Sandler's Late-filed Exhibit #3, Sandler, CWS, and the State will move to join CWS as a defendant and move for entry of the Second Amended Consent Judgment in Superior Court docket number 21 CVS 78. In addition, CWS and Sandler will apply to DWR for the treatment plant permit (WQ0014306) and the collection system permit (WQCS00290) to be issued to CWS.

The Commission finds that entry of the Second Amended Consent Judgment attached to the Settlement is a reasonable condition for the transfer.

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. 18 – 19**

Public Staff witness Franklin recommended that a bond of \$1 million be obtained by CWS for the System, whereas CWS maintains that a \$1 million is excessive in light of its commitment to upgrading and replacing the System.

Pursuant to the Settlement, CWS will be required to post a bond or letter of credit in the amount of \$650,000. The Commission approves as reasonable a bond or letter of credit of \$650,000 for CWS to acquire the System.

**EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. 20 – 22**

The evidence for these findings of fact is contained in the Application, the Commission’s records, the Settlement, and the testimony and exhibits of CWS witness Myers and Public Staff witness Franklin.

The Settlement provides that CWS will not request a rate increase until the Eagle Creek collection system has been replaced. At hearing, CWS witness Myers clarified, without objection from other parties, that this could include a modification of the system, and the correct meaning was that CWS would not request a rate increase until the New System Upgrade Plan has been implemented.

Public Staff witness Franklin testified that new rates were not being requested in the transfer proceeding, apart from a change in reconnection fees. He listed the existing and proposed rates as follows:

Monthly Flat Rate Wastewater Service:

	<u>Present</u>	<u>Proposed</u>
Residential Service	\$ 52.60	\$ 52.60
Mill Creek Golf Club	\$ 364.67	\$ 364.67
Moyock Middle School	\$ 884.20	\$ 884.20

Connection Charge:

Residential, per residence	\$3,000	\$3,000
Commercial, per REU (360 gpd)	\$3,000	\$3,000

Reconnection Charge:

If wastewater service cut off by utility for good cause:	Actual <sup>3</sup>	NA
Next Day Restore	NA	\$ 35.00
Same Day Restore <sup>4</sup>	NA	\$ 55.00
After Hours Restore	NA	\$ 100.00

<sup>3</sup> Neglect or failure to pay amounts due or otherwise comply with the provisions of this tariff shall be deemed to be sufficient cause for discontinuance of service. If such discontinuance of service becomes necessary, Sandler Utilities at Mill Run, LLC, will install a valve or other device to cut off and block the sewer line. The customer will be charged the actual cost of installing the valve or device including parts and labor.

<sup>4</sup> Same day restores will be billed at next day rate if request before 10:00 am (M-F), excluding holidays. Holidays billed at after-hours rate.

Witness Franklin testified that the proposed rates and fees are just and reasonable. The Commission agrees.

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. 23 – 24**

The evidence for these findings of fact is contained in the Application, the Commission's records, the Settlement, including Exhibit II, and the testimony of CWS witness Myers and Public Staff witness Franklin.

The Second Amended Consent Judgment as agreed upon by DEQ, Sandler, and CWS is attached to the Settlement as Exhibit II. The purpose of the Second Amended Consent Judgment is to ensure that the Eagle Creek Wastewater System operates satisfactorily, complies with environmental requirements, and receives improvements that will enable it to function more reliably in the long term. The Second Amended Consent Judgment anticipates a transfer of ownership from Sandler to CWS and imposes substantial requirements on CWS.

As part of those requirements, CWS will file with the Commission and DEQ a New System Upgrade Plan and shall provide status reports no later than March 31, June 30, September 30, and December 31 of each calendar year. Such reports will contain documentation sufficient to verify that all elements of the Interim Service and Restoration Plan, as will be required by the Second Amended Consent Judgment, have been completed during the prior quarter and status related to the execution of the New System Upgrade Plan. Such status reports will document the occurrence of any Sanitary Sewer Overflow (SSO) regardless of volume, actual cost versus budgeted cost, estimated total project cost, and updated estimated completion date for each activity. If a reportable SSO or material system or equipment failure occurs and upon request from DWR, CWS will submit status reports at the end of each calendar month. These status reports shall be submitted via e-mail to David May or his successor at DWR and be filed with the Commission.

Pursuant to the Settlement, CWS shall also file for Commission approval its agreement with Envirolink pursuant to N.C.G.S. § 62-153 prior to closing.

These requirements are part of the Settlement among the parties. The Settlement provides that the Commission's approval of the transfer be conditioned upon entry of the Second Amended Consent Judgment, with such modifications as may be required by the Superior Court of Currituck County, and upon all other regulatory approvals. At hearing the other regulatory approvals were identified as being issuance of collection system and wastewater treatment permits from DWR to CWS.



The Commission finds that the aforementioned requirements in the Second Amended Consent Judgment and the Settlement are reasonable and appropriate.

They provide for an independent engineering evaluation of System needs, independent engineering consulting and oversight, and the rigorous DWR oversight needed to promote further improvements in the System and in the owner's operational performance. The reporting requirements will enable regulators to better monitor the progress expected of the System owner.

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. 25 – 26**

The evidence for these findings of fact is contained in the Application, the Commission's records, the Settlement, and the testimony of CWS witness Myers, Sandler witness Willis, and Public Staff witnesses Franklin and Tran.

The Commission has reviewed the terms of the Settlement, finds them to be reasonable, and approves the Settlement in its entirety. The Settlement reflects agreement among all parties to the transfer proceeding. In addition, Exhibit II to the Settlement reflects agreement from DEQ regarding the terms and conditions affecting the environmental regulation of the System as it is transferred from Sandler to CWS.

CWS witness Myers testified that under the terms of the Settlement and the Second Amended Consent Judgment the transfer is in the public interest. Public Staff witness Tran testified to the financial viability of CWS to acquire, operate, and make improvements to the Eagle Creek Wastewater System. At hearing Public Staff witness Franklin stated "the Public Staff believes that the customers of the Eagle Creek subdivision will be adequately protected, and the transfer is in the best interest of the customers" under the terms of the Settlement. He testified that the transfer from Sandler to CWS, as envisioned by the Settlement, was the best solution to the problems at the Eagle Creek Wastewater System.

Based on the foregoing, the Commission finds that CWS has the technical, managerial, and financial capacity to own and operate the Eagle Creek Wastewater System.

The Commission further concludes that the proposed transfer will serve the public convenience and necessity, and is in the public interest, as required by N.C.G.S. § 62-111, provided that the Second Amended Consent Judgment is entered by the court.

IT IS THEREFORE ORDERED as follows:

1. That CWS is granted a certificate of public convenience and necessity to provide sewer utility service in Eagle Creek Subdivision, Mill Run Golf and Country Club ("Mill Run") and Moyock Middle School in Currituck County, North Carolina, effective upon the closing of the transfer of the sewer utility system assets to CWS, subject to entry of the Second Amended Consent Judgment by Currituck County Superior Court with such modifications as may be required by the Superior Court of Currituck County.
2. That CWS shall post a \$650,000 bond, in a form acceptable to and approved by the Commission, prior to closing.
3. That Appendix A, attached hereto, shall constitute the Certificate of Public Convenience and Necessity for Eagle Creek Subdivision, Mill Run Golf and Country Club, and Moyock Middle School.
4. That the Schedule of Rates, attached as Appendix B, is authorized to become effective for service rendered on and after the date of the closing of the transfer of wastewater system assets to CWS.
5. That a copy of this Order shall be mailed with sufficient postage or hand delivered to all customers within 10 days of the transfer of the sewer system assets and closing.
6. That CWS shall file a written notification with the Commission within five business days after the closing of the transfer of sewer system assets.
7. That CWS shall file a written notification with the Commission within five business days after the entry of the Second Amended Consent Judgment by Currituck County Superior Court.
8. 7. That the Certificate of Public Convenience and Necessity granted to Sandler, in Docket No. W-1130, Sub 0, is canceled effective on the date CWS files with the Commission written notification that closing of the transfer of the sewer system assets has been completed.
9. That CWS shall receive rate base treatment of the \$424,779, original cost net investment shown on Settlement Exhibit I and supporting schedules. This amount of rate base may be increased by any reasonable and prudent capital costs that may be incurred by Sandler prior to closing and does not include any amount for Materials and Supplies that may be included by CWS in rate base as part of Working Capital in the next rate case.
10. That CWS shall comply with all terms of the Settlement filed in this docket.

11. That a copy of this Order be mailed or hand delivered by CWS to the customers within 10 days of the effective date of this Order, and that CWS submit to the Commission the attached Certificate of Service properly signed and notarized no later than 30 days after the issuance of the Order.

ISSUED BY ORDER OF THE COMMISSION.

This the \_\_\_ day of \_\_\_\_\_, 2022.

NORTH CAROLINA UTILITIES COMMISSION

A. Shonta Dunston, Chief Clerk

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. W-1333, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

CURRITUCK WATER AND SEWER, LLC

is granted this

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

to provide sewer utility service to

EAGLE CREEK SUBDIVISION, MILL RUN GOLF AND COUNTRY CLUB,  
AND MOYOCK MIDDLE SCHOOL

Currituck County, North Carolina

subject to any orders, rules, regulations,  
and conditions now or hereafter lawfully made  
by the North Carolina Utilities Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the \_\_\_ day of \_\_\_\_\_, 2022.

NORTH CAROLINA UTILITIES COMMISSION

A. Shonta Dunston, Chief Clerk

SCHEDULE OF RATES  
for  
CURRITUCK WATER AND SEWER, LLC

for providing sewer utility service to

EAGLE CREEK SUBDIVISION, MILL RUN GOLF AND COUNTRY CLUB,  
AND MOYOCK MIDDLE SCHOOL

Currituck County, North Carolina

Monthly Rates for Sewer Utility Service:

Residential Service	\$ 52.60
Mill Creek Golf Club	\$ 364.67
Moyock Middle School	\$ 884.20

Connection Charge:

Residential, per residence	\$3,000
Commercial, per REU (360 gpd)	\$3,000

Reconnection Charge:

If wastewater service cut off by utility for good cause:	NA
Next Day Restore	\$ 35.00
Same Day Restore <sup>4</sup>	\$ 55.00
After Hours Restore	\$ 100.00

<u>Bills Due:</u>	On billing date
<u>Bills Past Due:</u>	15 days after billing date
<u>Billing Frequency:</u>	Monthly for service in advance
<u>Finance Charges for Late Payment:</u>	1% per month will be applied to the unpaid balance of all bills still past due 25 days after billing date.

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-1333, Sub 0, on this the \_\_\_\_ day of \_\_\_\_\_, 2022.

**CERTIFICATE OF SERVICE**

I, \_\_\_\_\_, mailed with sufficient postage or hand delivered to all affected customers the Order issued by the North Carolina Utilities Commission in Docket Nos. W-1333, Sub 0, and W-1130, Sub 11, and the Order was mailed or hand delivered by the date specified in the Order.

This the \_\_\_\_ day of \_\_\_\_\_, 2022.

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

\_\_\_\_\_  
Name of Utility Company

The above named Applicant, \_\_\_\_\_, personally appeared before me this day and, being first duly sworn, says that the required Order was mailed or hand delivered to all affected customers, as required by the Commission Order dated \_\_\_\_\_, 2022 in Docket Nos. W-1333, Sub 0, and W-1130, Sub 11.

Witness my hand and notarial seal, this the \_\_\_\_ day of \_\_\_\_\_, 2022.

(SEAL) \_\_\_\_\_  
Notary Public  
\_\_\_\_\_  
Printed Name

My Commission Expires: \_\_\_\_\_  
Date