

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. W-1320, SUB 0
DOCKET NO. W-1300, SUB 55
DOCKET NO. W-1320, SUB 2
DOCKET NO. W-661, SUB 9

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. W-1320, Sub 0)
DOCKET NO. W-1300, Sub 55)

In the Matter of)
Application by ONSWC - Chatham North, LLC,)
4700 Homewood Court, Suite 108, Raleigh, North)
Carolina 27609, and Old North State Water Company)
LLC, 4700 Homewood Court, Suite 108, Raleigh,)
North Carolina 27609, for Authority to Transfer the)
Briar Chapel Subdivision Wastewater System and)
Franchise in Chatham County, North Carolina, and)
Approval of Rates)

DOCKET NO. W-1320, Sub 2)
DOCKET NO. W-661, Sub 9)

In the Matter of)
Application by ONSWC - Chatham North, LLC,)
4700 Homewood Court, Suite 108, Raleigh, North)
Carolina 27609, and Fitch Creations, Inc., d/b/a)
Farrington 2000 Farrington Village Center, Pittsboro)
North Carolina 27312, for Authority to Transfer the)
Farrington Village Wastewater System and)
Franchise in Chatham County, North Carolina, and)
Approval of Rates)

MOTION TO
RESCHEDULE
EVIDENTIARY
HEARING

NOW COMES THE PUBLIC STAFF through its Executive Director,
Christopher J. Ayers, and moves that the Commission reschedule the evidentiary
hearing scheduled for Wednesday, January 22, 2020, at 10:00 am, and schedule
an evidentiary hearing at least 150 days or later from today in order for the Public
Staff and customers to further investigate and prepare testimony on the customer

service issues at Briar Chapel, and provide the opportunity for Old North State Water Company, LLC (Old North State) and ONSWC-Chatham North, LLC (Chatham North) to develop and successfully implement procedures and operational modifications to resolve the customer service issues. In support of this motion, the Public Staff states:

1. Prior to the public hearing for customer only testimony on Tuesday, January 14, 2020, at the Historic Chatham County Courthouse in Pittsboro, there had been 14 customer protests filed with the Commission and Public Staff in these dockets. However, only 3 customer protests were filed prior to the Public Staff filing its testimony on December 20, 2020. There were five customer protests filed on January 2, 2020, and six filed on January 13, 2020, the day before the customer only public hearing.

2. The public hearing for customer testimony only was held as scheduled on Tuesday, January 14, 2020. Approximately 230 customers attended the overflow hearing and a total of 32 customers testified with 31 being Briar Chapel customers, and only one being a Fearrington Village customer. A total of 26 exhibits were entered into evidence by the 31 Briar Chapel testifying customers.

3. One of the hearing exhibits was a petition signed by approximately 637 Briar Chapel customers requesting the Commission deny the transfer of the Fearrington Village wastewater utility system to Chatham North including with the interconnection to the Briar Chapel WWTP, stating the current operating practices of Old North State “present nuisances such as odors, sewer spillage, soil erosion, and broken irrigation.”

4. Each of the 31 Briar Chapel customers that testified on January 14, 2020 stated they opposed the proposed transfers and the interconnection of the Briar Chapel and Fearington Village wastewater utility systems. The customers testified of (1) strong odors from the WWTP, (2) strong odors from the reclaimed water irrigation system, (3) significant over irrigation on the reclaimed water spray fields resulting in standing water, and damage to the vegetation, (4) fourteen raw sewage sanitary sewer overflows since October 2017, (5) overburden of easements and (6) significant lack of response by Old North State and its contract operator Envirolink, Inc. (Envirolink) to customer service complaints. Customers also testified the reclaimed water spraying occurred outside the Division of Environmental Quality (DEQ) permitted spray areas with reclaimed water sprayed unto the pickleball courts, pickleball players, sidewalks, streets, automobiles and residences. The testimony was that reclaimed water spray irrigation odor and spray issues are experienced in many different areas within the Briar Chapel development.

5. The Public Staff has been informed by Old North State during the summer and early fall of 2019 that Old North State had several meetings with the Briar Chapel Community Association (BCCA) Board of Directors explaining the plans for interconnecting the Briar Chapel and Fearington Village wastewater utility systems including treating all the wastewater from both service areas at the to be expanded Briar Chapel WWTP.

6. As the BCCA had not contacted the Public Staff about this proceeding, nor had the BCCA petitioned to intervene, the Public Staff assumed the BCCA did not have major concerns.

7. At the January 14, 2019, public hearing in Pittsboro, testifying were five of the BCCA Board of Directors, all of whom vigorously opposed the Old North State, Chatham North and Fearington Village applications. Each of the five Board of Directors introduced into evidence well prepared exhibits describing their views of inadequate service provided by Old North State and its contract operator Envirolink. The extent of the BCCA opposition surprised the Public Staff.

8. It was late Thursday afternoon, January 16, 2020, that the BCCA prior actions or lack of actions became clear to the Public Staff. The developer of Briar Chapel being NNP-Briar Chapel, LLC (Developer) controlled the BCCA Board of Directors until the turnover of the Board of Directors to the residents at the BCCA annual meeting in late November, 2019. It was only after that turnover, that the Briar Chapel homeowners had control of the BCCA decision making processes. The current BCCA board members elected by the homeowners have advised the Public Staff that the BCCA despite their efforts was unsuccessful in hiring an attorney prior to the December 27, 2019, deadline for petitions to intervene in this proceeding.

9. After the January 14, 2020 public customer hearing, several Briar Chapel customers asked Public Staff attorney William Grantmyre for recommendations of attorneys to represent the Briar Creek Chapel customers in

this proceeding. William Grantmyre provided the names of three knowledgeable, attorneys with extensive experience in Commission proceedings.

10. The Briar Chapel customers contacted all three recommended attorneys and are continuing discussions with the one attorney that did not have a conflict. The Briar Chapel customer group has continued to organize as a nonprofit and has already obtained a federal tax identification number. The Briar Chapel customers plan to continue working to retain an attorney to intervene. An issue for even a very knowledgeable and skilled attorney with more than 40 years experience practicing before the Commission, is that there is not adequate time to prepare for a January 22, 2020 evidentiary hearing.

11. The Public Staff strongly believes the Developer controlled BCCA (through late November 2019) had substantially different interests compared to the new resident controlled BCCA. The Public Staff believes there is a good cause for the Commission to approve the intervention of the BCCA or a customer group pursuant to Commission Rule R1-19(b).

12. The Briar Chapel customers have informed the Public Staff that the BCCA has been advised by its property owners association attorney that the BCCA can advocate for the BCCA owned properties, but not for the Briar Chapel residential customers. The Public Staff does not have expertise in property/homeowner association laws and procedures, but different property owner associations have represented their members in past Commission proceedings. It was only the weekend of January 11 and 12, 2020, that the Briar Chapel residents learned the BCCA would not be representing them. Hence, the

fact the petition of the Briar Chapel customers containing approximately 647 signatures were gathered in 2 to 3 days demonstrates the extent of the customers' discontent with the wastewater utilities service at Briar Chapel.

13. On Saturday, January 18, 2020, Public Staff Engineer Charles Junis and Attorney William Grantmyre visited the area around the Briar Chapel WWTP, effluent storage pond, and the tennis/pickleball complex accompanied by BCCA President Thomas Speer. Mr. Junis and Mr. Grantmyre observed that the residences near the Briar Chapel WWTP along Whispering Wind Drive were visually shielded from the WWTP by approximately 50 yards of pine forest, the residences along Middleton Place were visually shielded by extremely heavy pine forest and an extremely large hill or berm, and the Encore swim club/clubhouse complex was visually shielded from the WWTP by pine forest and a hill or berm. We did observe sewage odors while standing at the Encore swim club/clubhouse. We were advised the sewage odors are much worse in warmer weather restricting the use of the swim club/clubhouse facilities. It was clear that customers that purchased these houses, due to the various access streets, could have been totally unaware of the nearby WWTP when they purchased their homes.

14. The Briar Chapel reclaimed water irrigation system is different from the overwhelming majority of Commission regulated wastewater systems utilizing reclaimed water where the reclaimed water is sprayed and a golf course or other field away from the customer residences. At Briar Chapel, the reclaimed water is permitted and sprayed throughout this extremely large development along roadways, road medians, walking and riding trails, and in some customer's yards.

The Public Staff has not received extensive odor complaints from the other Commission regulated reclaimed water systems, including the one or possibly two that irrigate reclaimed water near houses. In addition, none of those other reclaimed water systems have the extremely lengthy reclaimed water pipes as does Briar Chapel.

15. The Public Staff does not consider that minimal compliance with the DEQ permit reclaimed water quality requirements leaving the WWTP to be adequate for customer service. The effluent leaves the WWTP and is discharged into a large holding pond in which there are ducks, geese, and other wildlife. The effluent is not refiltered prior to being pumped in the reclaimed water irrigation pipes. It is the Public Staff's understanding that Old North State has never added chlorine as a disinfectant to the effluent entering the reclaimed water piping. In addition, the Public Staff understands the reclaimed water pipes have never been flushed. The Public Staff believes that the maintenance and operations of the reclaimed water pumping system need to be carefully studied and Old North State needs to successfully implement a series of corrective measures to eliminate the odors. These corrective measures may include the chlorination, flushing and other necessary maintenance and operational improvements.

16. The Public Staff is extremely concerned about the extensive and compelling customer testimony on the reclaimed water issues including odor, excessive watering, spraying outside the permitted areas, windblown reclaimed water, and the lack of responsiveness by Old North State and Environlink's to the customer complaints. As this motion is being drafted, the Public Staff has not

received the written responses of Old North State and Chatham North to the January 14, 2020, customer testimony. The hearing transcript was received by the Public Staff this morning. The Public Staff does not have adequate time to prepare for the evidentiary hearing scheduled for Wednesday, January 22, 2020.

17. The Public Staff was advised by the Old North State personnel on its December 17, 2019, Briar Chapel and Fearington Village site visits that a soft start/soft shutdown control system had been installed on the Briar Chapel major collection system pump station, which has greatly reduced or eliminated the water hammer which Old North State believes caused most of the sewage leaks and overflows. Old North State advised the Public Staff that there have not been any sewage leaks or overflows subsequent to the pump control system modifications. However, the Public Staff believes additional time is necessary to monitor the effectiveness of these pumping modifications.

18. The Public Staff believes that prior to any Commission approval of the applied for transfers, including the interconnection, that Old North State shall be required to develop and successfully implement the necessary equipment improvements and improved maintenance and operating procedures to drastically minimize the WWTP, effluent storage pond, and reclaimed water irrigation odors, and other reclaimed water spray irrigation issues. The reclaimed water irrigation does not occur in the winter months and is not expected to resume until approximately April 1, 2020. Therefore, the Public Staff requests the evidentiary hearing be rescheduled for approximately 150 days or later beyond January 22, 2020.

19. The Public Staff has major concerns about the impact of an inadequately designed, installed, maintained, or operated regional WWTP in close proximity to residences. The Public Staff's January 18, 2020, visit to the nearby residences revealed that the WWTP was not visible and as previously stated, it could easily be the case that the homeowners were unaware of the close proximity of the WWTP when they purchased their homes. Attached as Public Staff Motion Exhibit 1 is an aerial photograph showing the close proximity of the WWTP to newly constructed houses. There are also a number of houses under construction near the WWTP. The Public Staff believes it is essential that the WWTP sewage odors be materially minimized. The Developer, not the customers, chose the WWTP location and decided to construct houses in close proximity to the WWTP.

20. The planned 750,000 gallon per day micro-bioreactor (MBR) WWTP extension is a relatively new technology and the odor control methods need to be thoroughly investigated with odor control equipment and procedures for successful odor control implementation demonstrated from other MBR WWTPs and also for the existing Briar Chapel 250,000 gallon per day extended aeration WWTP. The Commission currently only regulates several utilities owning and operating MBR WWTP's. The Public Staff has very limited experience with the maintenance and operations of MBR WWTP's and particularly odor control. The Public Staff needs time to carefully investigate. The Public Staff verily believes all the Commission regulated MBP WWTP's are much greater distances from customer residences than the planned Briar Chapel MBR WWTP expansion.

WHEREFORE, the Public Staff moves as follows:

1. That the Commission allow when filed the intervention of the BCCA and/or Briar Chapel customer group pursuant to Commission Rule R1-19(b).
2. That the January 22, 2020, scheduled evidentiary hearing be rescheduled for a date approximately 150 or more days beyond January 22, 2020.
3. That the Public Staff, the approved interveners, if any, Old North State, Chatham North, and Fitch Creations be permitted to conduct discovery prior to the rescheduled evidentiary hearing.
4. That the Commission order the pre-filing of the following testimony:
 - a. That Old North State, Chatham North, and Fitch Creations (the owner of Fearrington Village wastewater utility system) file supplemental direct testimony 45 days prior to the rescheduled evidentiary hearing;
 - b. That the Public Staff and interveners, if any, file testimony 30 days prior to the rescheduled evidentiary hearing; and
 - c. That Old North State, Chatham North, and Fitch Creations file supplemental rebuttal testimony 15 days prior to the rescheduled evidentiary hearing.

Respectfully submitted, this the 21st day of January 2020.

PUBLIC STAFF
Christopher J. Ayers
Executive Director

David T. Drooz
Chief Counsel

Electronically submitted
/s/ William E. Grantmyre
Staff Attorney

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CERTIFICATE OF SERVICE

I this day served a copy of this Motion to Reschedule Hearing upon Karen Kemerait, the attorney for Old North State Water Company LLC and ONSWC - Chatham North, Inc. and also on Fitch Creations d/b/a Fearington Utilities by electronic delivery.

This the 21st day of January, 2020.

Electronically submitted
s/ William E. Grantmyre