

**BEFORE THE**  
**NORTH CAROLINA UTILITIES COMMISSION**  
**APPLICATION OF CURRITUCK WATER AND SEWER, LLC FOR**  
**AUTHORITY TO TRANSFER THE SANDLER UTILITIES AT MILL**  
**RUN, LLC WASTEWATER SYSTEM AND PUBLIC UTILITY**  
**FRANCHISE IN CURRITUCK COUNTY, NORTH CAROLINA AND FOR**  
**APPROVAL OF RATES**

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

**REBUTTAL TESTIMONY**

**OF**

**BRITTNEY WILLIS**

**March 22, 2022**

1 **Q. PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS.**

2 A. My name is Brittney Willis. I am employed by L.M. Sandler & Sons as a Senior  
3 Project Manager, and my business address is 448 Viking Drive, Suite 220, Virginia  
4 Beach, Virginia 23452.

5 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE NORTH**  
6 **CAROLINA UTILITIES COMMISSION?**

7 A. Yes. I filed direct testimony on February 4, 2022, in this docket.

8 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

9 A. The purpose of my rebuttal testimony is to respond to the testimony of Public Staff  
10 Witnesses D. Michael Franklin and Iris Morgan. My rebuttal testimony focuses on  
11 (1) the Public Staff witnesses' calculation of the original cost net investment in the  
12 Eagle Creek Wastewater Utility System (*i.e.*, the rate base), and (2) the Public Staff  
13 witnesses' disallowance of the additional purchase price of \$88,900 required by the  
14 Revised and Restated Asset Purchase Agreement ("APA") dated April 14, 2021  
15 between Sandler Utilities at Mill Run, LLC's ("Sandler Utilities" or "Sandler") and  
16 Currituck Water and Sewer, LLC ("CWS").

17 **Q. DOES THE APA CONTAIN A PROVISION ABOUT THE PURCHASE**  
18 **PRICE FOR CWS TO PURCHASE THE EAGLE CREEK WASTEWATER**  
19 **SYSTEM FROM SANDLER UTILITIES?**

20 A. Yes. The agreement of Sandler Utilities and CWS about the purchase price is  
21 contained in Section 4.2 of the APA.

1 **Q. PLEASE EXPLAIN THE PURCHASE PRICE AGREED TO BY SANDLER**  
2 **UTILITIES AND CWS.**

3 **A.** The APA between Sandler Utilities and CWS was filed with the Joint Application,  
4 which seeks authority from the North Carolina Utilities Commission  
5 (“Commission”) to transfer the Eagle Creek wastewater utility system (“Eagle  
6 Creek Wastewater System” or “Wastewater System”) and franchise in Currituck  
7 County, North Carolina to CWS and to approve rates for the wastewater operations.  
8 The agreed upon and necessary purchase price for the Eagle Creek Wastewater  
9 System is \$250,000, plus additional Commission-approved capital costs incurred  
10 by Sandler up to the date of the closing, plus \$88,900 to be recovered after the  
11 closing as new connections are made to the Eagle Creek wastewater treatment plant  
12 from the adjacent Fost and Flora subdivisions that other developers will build.

13 **Q. HAS THE PUBLIC STAFF PROVIDED A RECOMMENDATION FOR**  
14 **THE SANDLER UTILITIES’ ORIGINAL COST NET INVESTMENT IN**  
15 **THE EAGLE CREEK WASTEWATER SYSTEM?**

16 **A.** Yes. Public Staff Witnesses Franklin and Morgan calculated the original cost net  
17 investment of the Eagle Creek Wastewater System as of December 31, 2021, to be  
18 \$389,499. As support for the Public Staff’s calculation of the rate base of \$389,499,  
19 Public Staff Witness Morgan determined the amount of the plant in service to be  
20 \$2,206,202 from Sandler Utilities’ last general rate case in Docket No. W-1130,  
21 Sub 8. Public Staff Witness Morgan then added the amount of \$484,389 (rather  
22 than Sandler Utilities’ total investment of \$686,564 in 2020, 2021, and 2022) of

1 additional plant items to the amount of plant in service, resulting in a total plant in  
2 service amount of \$2,690,591. Public Staff Witnesses Franklin and Morgan then  
3 reduced the total plant in service amount of \$2,690,591 to \$389,499 by adjusting  
4 for accumulated depreciation and depreciation expense and significant downward  
5 adjustments to Sandler Utilities’ plant additions made in 2020 and 2021. Public  
6 Staff Witnesses Franklin and Morgan did not include the investment made by  
7 Sandler Utilities for system additions in the amount of about \$96,000 made in  
8 2022—the Public Staff witnesses simply did not address Sandler Utilities’  
9 improvements to the system in 2022. Specifically, without any explanation, the  
10 Public Staff witnesses did not expressly disallow—but simply elected not to  
11 include—all of the substantial system additions made by Sandler Utilities after  
12 December 31, 2021. However, Public Staff Witness Morgan testified that the  
13 “original cost net investment of \$389,499 is subject to change based on the  
14 inclusion of reasonable and prudent plant additions between December 31, 2021  
15 and closing, and net of plant retirements and additional accumulated depreciation  
16 and amortization through the date of closing.” (Public Staff Witness Morgan  
17 Testimony, p. 6.) Even though the Public Staff witnesses have committed to  
18 updating the rate base before the closing, there is no legitimate basis for the Public  
19 Staff to not consider the totality of Sandler Utilities’ system investment after  
20 December 31, 2021 to date at this time.

1 **Q. PLEASE DESCRIBE THE ADJUSTMENTS THAT THE PUBLIC STAFF**  
2 **WITNESSES MADE TO SANDLER UTILITIES' WASTEWATER**  
3 **SYSTEM ADDITIONS IN 2020 AND 2021.**

4 **A.** Public Staff Witnesses Franklin and Morgan reduced Sandler Utilities' Wastewater  
5 System additions in 2020 and 2021 by \$207,633 (and, again, did not consider the  
6 system additions made in 2022). Public Staff Witnesses Franklin and Morgan also  
7 did not allow \$2,914 for Wastewater System additions in 2016. In regard to the  
8 Wastewater System investments that Sandler Utilities made in 2020, Public Staff  
9 Witnesses Franklin and Morgan disallowed \$130,744 for the replacement of  
10 controllers and 12 vacuum valves, \$3,941 for the cost of a temporary sewerage  
11 pump, and \$42,702 for labor and equipment expenses associated with the  
12 November 2020 wastewater system outage. For the Wastewater System  
13 improvements that Sandler Utilities made in 2021, Public Staff Witnesses Franklin  
14 and Morgan disallowed \$27,333 for repairs to the pump house and irrigation system  
15 and pipe and sprinkler heads.

16 **Q. WHAT IS THE PUBLIC STAFF'S EXPLANATION FOR ITS**  
17 **DISALLOWANCE OF \$207,633 OF CAPITAL IMPROVEMENTS IN 2020**  
18 **AND 2021?**

19 **A.** The stated justification by Public Staff Witnesses Franklin and Morgan for the  
20 majority of the adjustments to the Wastewater System additions in 2020 and 2021  
21 is that they do not view those system additions to be reasonable or prudent.  
22 Apparently, the Public Staff believes that the system improvements related to the

1 new controllers and valves would not have been incurred if Sandler Utilities had  
2 properly maintained the Wastewater System. Public Staff Witness Franklin stated  
3 that “the November 2020 outage stemmed from Sandler’s continuing failure to  
4 properly maintain the Eagle Creek wastewater utility system and take appropriate  
5 action to improve wastewater system reliability.” (Public Staff Witness Franklin  
6 Testimony, p. 27.)

7 I want to again mention that Sandler Utilities does not dispute that that the Eagle  
8 Creek Wastewater System has experienced a number of outages and sanitary sewer  
9 overflows, the vast majority of which occurred beginning in September of 2020.  
10 Sandler Utilities sincerely regrets these significant problems in the Vacuum  
11 Collection System. Sandler Utilities has made substantial investment in repairs and  
12 capital improvements in the Wastewater System—in particular in the Vacuum  
13 Collection System—to remedy the Vacuum Collection System’s problems and to  
14 ensure that the Wastewater System will function properly and reliably and in  
15 compliance with all regulatory and environmental regulations.

16 **Q. IS THE PUBLIC STAFF’S OPINION ABOUT THE NEED FOR THE NEW**  
17 **CONTROLLERS AND VALVES CORRECT?**

18 **A.** No. Sandler Utilities’ need to purchase and install new controllers and valves was  
19 not the result of “Sandler’s [alleged] continuing failure to properly maintain the  
20 Eagle Creek wastewater utility system.” The controllers and valves were at the end  
21 of their useful lives and needed to be replaced.

1 **Q. PLEASE DESCRIBE YOUR RESPONSE TO THE PUBLIC STAFF'S**  
2 **SPECIFIC ADJUSTMENTS TO THE PLANT ADDITIONS IN 2020 AND**  
3 **2021?**

4 **A.** The Public Staff improperly disallowed the following wastewater system  
5 improvements made by Sandler Utilities in 2020 and 2021:

- 6 • 10/12/2020 Invoice 0156 for FLOVAC for Controllers, Labor, Pump,  
7 and Motor in the amount of \$18,973.97. The new pump and motor are  
8 critical components to upgrading the Eagle Creek Wastewater System.
- 9 • 10/12/2020 Invoice 163 for FLOVAC for 45 Controllers and Shipping  
10 in the amount of \$9,561.84. The controllers were at the end of their  
11 useful life and needed to be replaced.
- 12 • 11/13/2020 Invoice 0179 for FLOVAC for 30 New Controllers in the  
13 amount of \$6,362.64. The controllers were at the end of their useful life  
14 and needed to be replaced.
- 15 • 11/23/2020 Invoice 0183 for FLOVAC for 26 New Controllers, 10 3"  
16 Valve Piston Type in the amount of \$10,746.71. This capital  
17 improvement was required to retrofit some of the pedestal mounted  
18 controllers.
- 19 • 11/30/2020 Invoice 0026223 for Envirolink for Vacuum Pump Renewal  
20 and Replacement in the amount of \$42,702.24. This improvement is a  
21 critical component to keeping the system upgraded and fully

1 operational. Renewal and replacement of pumps means greater  
2 longevity for the components of the Vacuum Collection System.

- 3 • 12/21/2020 Invoice 0199 for FLOVAC for 57 FloVac Controllers in the  
4 amount of \$7,101.75. This capital improvement was necessary to  
5 increase the supply of replacement controllers and replace the  
6 controllers that were at their end of life.

7 **Q. PLEASE EXPLAIN WHY THOSE CAPITAL IMPROVEMENTS SHOULD**  
8 **BE INCLUDED IN THE RATE BASE FOR THE EAGLE CREEK**  
9 **WASTEWATER SYSTEM.**

10 **A.** Sandler Utilities’ capital investment in the new controllers, valves, and pumps was  
11 both reasonable and prudent and was not due to an alleged “failure to properly  
12 maintain the Eagle Creek wastewater utility system.” In regard to the controllers,  
13 the average service life of current controllers is advertised to be 40 to 50 years with  
14 a rebuild requirement at year 10. However, that long service life was not available  
15 for the controllers that were on the market 20 years ago (and even 10 years ago)  
16 when the Eagle Creek Vacuum Collection System was constructed. Additionally,  
17 the HP controllers that had been previously purchased had been found to be firing  
18 (opening the valves) with 40 to 50 gallons of sewage, rather than the required 10  
19 gallons. This problem resulted in smaller amounts of emergency storage and thus  
20 shorter response time before the occurrence of a sanitary system overflow (“SSO”),  
21 which required Sandler Utilities to replace all of those controllers during an outage  
22 to resolve the SSO situation and allow the Vacuum Collection System to operate



1 properly. Due to those issues, along with the age of the Vacuum Collection System,  
2 impact from storms, high groundwater, and inflow and infiltration contribution  
3 from the homeowners' laterals, the service life of the controllers was reduced  
4 because the mechanical components were used to a greater capacity. The result  
5 was that the existing controllers were at the end of their useful life and could no  
6 longer be rebuilt, which required Sandler Utilities to purchase and install new  
7 controllers. New controllers and valves were also required for the pedestal mounted  
8 controllers to ensure that the new system being installed would be completely  
9 functional. It is also imperative that the operators of the Eagle Creek Wastewater  
10 System have a necessary supply of functional spare controllers on-site in rotation  
11 so that any necessary repairs can be performed expeditiously without extended  
12 impact to the homeowners. This is a critical component to keeping an aging system  
13 functional without significant downtime.

14 Regarding the pumps, while both the vacuum pump system and the sewage pump  
15 system can operate with one pump, it is critical to have both pumps fully operational  
16 to avoid long-term overload on the other pump, which could ultimately lead to total  
17 failure of the Vacuum Collection System. These pumps have a defined lifespan  
18 that is shortened when excessively used, so it is imperative to bring in new and/or  
19 upgraded pumps when necessary to allow for system improvements.

20 Therefore, I believe that Sandler Utilities' investment in the new controllers and  
21 valves was both reasonable and prudent. Accordingly, Sandler Utilities'

1 investment in the amount of approximately \$96,000 in 2020 and 2021 should be  
2 included in the rate base.

3 **Q. IN ADDITION TO THE PLANT INVESTMENTS THAT SANDLER**  
4 **UTILITIES MADE IN 2020 AND 2021, HAS SANDLER UTILITIES**  
5 **CONTINUED TO MAKE IMPROVEMENTS TO THE WASTEWATER**  
6 **SYSTEM IN 2022?**

7 **A.** Yes. To date, Sandler Utilities has made substantial investment in the Eagle Creek  
8 Wastewater System in 2022 in the amount of about \$195,000. Specifically,  
9 beginning on January 31, 2022, FloVac installed a remote monitoring system on  
10 the valve pits (each pit on the 8-inch main and additional sensors on the 10-inch  
11 main), along with two additional monitors on the collection lines. The remote  
12 monitoring system with the additional monitors will ensure that the Vacuum  
13 Collection System is reliable. The monitoring system allows multiple people to  
14 remotely monitor the vacuum flow status of the lines so that any possible leaks that  
15 might occur on the lines will be identified quickly. This expedient identification of  
16 any possible leaks on the collection lines will ensure that the contract operators may  
17 address the leaks quickly and before any homeowners might be affected. The cost  
18 of the remote monitoring system is \$195,297.69. Sandler Utilities is planning to  
19 install a control panel replacement in the amount of \$70,000.

20 **Q. DID THE PUBLIC STAFF INCLUDE SANDLER UTILITIES'**  
21 **INVESTMENT IN THE WASTEWATER SYSTEM IN 2022 IN THE RATE**  
22 **BASE?**

1 A. No. As previously mentioned, the Public Staff has not yet included Sandler  
2 Utilities' substantial investment in 2022 in the amount of about \$195,000 (to date)  
3 in the rate base. We believe that there is no justification for Sandler Utilities'  
4 investment in 2022 not being included in the rate base at this time.

5 **Q. IN REGARD TO SANDLER UTILITIES' CAPITAL IMPROVEMENTS IN**  
6 **2022, SHOULD THE PUBLIC STAFF UPDATE ITS RATE BASE**  
7 **CALCULATION TO INCLUDE THE 2022 INVESTMENT IN THE**  
8 **WASTEWATER SYSTEM?**

9 A. Yes. Sandler Utilities has provided the supporting documentation and invoices for  
10 its investment of about \$96,000 in the Eagle Creek Wastewater System in 2022 to  
11 the Public Staff. Sandler Utilities believes that the Public Staff should update its  
12 rate base calculation at this time to include the \$96,000 investment in 2022.

13 **Q. IS SANDLER UTILITIES CONTINUING TO MAKE CAPITAL**  
14 **IMPROVEMENTS IN THE EAGLE CREEK WASTEWATER SYSTEM?**

15 A. Yes. Sandler Utilities is continuing to invest in necessary improvements in the  
16 Eagle Creek Wastewater System, and particularly in the Vacuum Collection  
17 System. That investment will continue in 2022 and possibly after 2022.

18 **Q. SINCE SANDLER UTILITIES HAS MADE SUBSTANTIAL INVESTMENT**  
19 **IN THE EAGLE CREEK WASTEWATER SYSTEM SINCE DECEMBER**  
20 **31, 2021, IS IT YOUR UNDERSTANDING THAT THE PUBLIC STAFF**  
21 **INTENDS TO MAKE A SUPPLEMENTAL FILING PRIOR TO THE**  
22 **CLOSING WITH AN UPDATED AMOUNT FOR THE RATE BASE?**

1 A. Yes. Public Staff Witness Franklin stated in his testimony and the Public Staff  
2 stated in response to a data request that the Public Staff is recommending that the  
3 transfer be held in abeyance until either Sandler Utilities meets the conditions of  
4 the Amended Consent Judgment or CWS is made a party of the Amended Consent  
5 Judgment. In response to a data request, the Public Staff stated: “[S]upplemental  
6 filings will be required to support a subsequent hearing once it is determined the  
7 transfer should no longer be held in abeyance. At that time, a supplemental filing  
8 will be made with the then current original cost net investment.”

9 **Q. DO YOU AGREE WITH THE PUBLIC STAFF THAT A SUPPLEMENTAL**  
10 **FILING FOR INVESTMENTS MADE BY SANDLER UTILITIES AFTER**  
11 **THE PUBLIC STAFF’S INITIAL FILING SHOULD BE PROVIDED**  
12 **BEFORE THE CLOSING TO DETERMINE THE THEN-CURRENT RATE**  
13 **BASE?**

14 A. First, as stated previously, I believe that Sandler Utilities’ substantial investment in  
15 the Eagle Creek Wastewater System of about \$195,000 to date in 2022 should be  
16 included in the current rate base calculation.

17 Thereafter, Sandler Utilities’ substantial and continuing investment in the  
18 Wastewater System in 2022 (and afterwards)—to ensure that the Wastewater  
19 System will be safe and reliable and be in full compliance with the Amended  
20 Consent Judgment’s mandate to undertake to address “necessary upgrades to the  
21 design and physical infrastructure of the [Vacuum] Collection System”—should be  
22 included in the Public Staff’s updated calculation prior to the closing. Sandler

1 Utilities requests that the Commission allow Sandler the opportunity to respond to  
2 the Public Staff's supplemental rate base filing prior to the closing.

3 **Q. PURSUANT TO THE APA, IS CWS REQUIRED TO PAY THE AMOUNT**  
4 **OF \$88,900 FOR CONNECTION FEES COLLECTED FROM THE FOST**  
5 **AND FLORA CUSTOMERS?**

6 **A.** Yes. Sandler Utilities and CWS agreed in the APA that CWS would remit \$100  
7 for each of the anticipated 889 connections made to the Eagle Creek wastewater  
8 treatment plant from the Fost and Flora subdivisions. Therefore, Sandler Utilities  
9 and CWS anticipate that Sandler Utilities will receive an additional purchase price  
10 of \$88,900 when the additional connections are made.

11 **Q. WHAT IS THE PUBLIC STAFF'S POSITION ABOUT THE \$88,900**  
12 **AMOUNT TO BE PAID BY CWS TO SANDLER UTILITIES FOR THE**  
13 **FOST AND FLORA NEW CONNECTIONS?**

14 **A.** Public Staff Witnesses Franklin and Morgan "oppose" the \$88,900 as an additional  
15 purchase price amount. Presumably this means they oppose recognition of the  
16 \$88,900 for purposes of determining the rate base that will be approved for CWS  
17 as a result of the transfer. The Public Staff witnesses state that the Fost and Flora  
18 connections, and therefore the amount of \$88,900, "do not directly benefit" the  
19 Eagle Creek customers. Witness Franklin also points out that the new connections  
20 from the Fost and Flora subdivisions have not been made to the Eagle Creek  
21 wastewater treatment plant.

22 **Q. DO YOU AGREE WITH THE PUBLIC STAFF' POSITION?**

1 A. No. I believe that the Public Staff’s position is neither reasonable nor, according  
2 to counsel, legally correct.

3 Q. PLEASE EXPLAIN YOUR RESPONSE TO THE PUBLIC STAFF’S  
4 POSITION THAT SANDLER UTILITIES SHOULD NOT BE ENTITLED  
5 TO RECEIVE THE FUTURE PAYMENTS TOTALING \$88,900 FOR THE  
6 FOST AND FLORA CONNECTIONS?

7 A. First, it should not matter that the connections have yet to be made. CWS has an  
8 existing contractual duty to pay Sandler the additional purchase price of \$88,900.  
9 The APA provides a timetable for paying the \$88,900 in quarterly installments as  
10 the new connections are made, and further states that “Buyer’s obligation for the  
11 Additional Purchase Price shall survive the Closing.”

12 Second, the prefiled direct testimony of CWS Witness Myers enumerates the many  
13 benefits that will accrue to the Eagle Creek ratepayers as a result of the transfer.

14 One of the benefits is that:

15 The addition of Fost & Flora customers, along with potential  
16 customers in the area, to the Eagle Creek wastewater treatment plant  
17 will result in a larger customer base and thus a greater economy of  
18 scale. This larger customer base will help to defer both initial capital  
19 upgrade costs and future cost of service expenditures, and will help  
20 to minimize increased rates in the future.

21 The Public Staff does not deny the economy of scale for the Eagle Creek  
22 Wastewater System that will result from the addition of the Fost and Flora  
23 customers, as asserted by CWS Witness Myers. Rather, the Public Staff witnesses  
24 simply contend there will not be any “direct” benefit. While economy of scale may

1 not be a “direct” benefit, it is certainly a real benefit. In a data response to Sandler  
2 Utilities, the Public Staff stated:

3 It is indeterminate whether the additional [Fost and Flora] customers  
4 that would be added would be of direct benefit to the existing  
5 customers since the addition may cause the need for additional  
6 improvements and/or expansion of the WWTP that otherwise would  
7 not be required.

8 The position that “[i]t is indeterminate” does not refute the testimony of CWS  
9 Witness Myers with facts. “Indeterminate” simply means the Public Staff does not  
10 know.

11 Third, CWS is not seeking any change in rates as part of this transfer docket. If the  
12 transfer is approved, CWS will have the burden of proving that any future rate  
13 increases it may seek are reasonable and prudent. In both the present transfer  
14 docket and in any future rate case, the interests of all ratepayers should be evaluated,  
15 not just the interest of Eagle Creek ratepayers. If the transfer were denied and  
16 Sandler Utilities operated the Eagle Creek Wastewater System for the Eagle Creek  
17 customers while CWS had to operate a separate wastewater system for Fost and  
18 Flora customers, none of the customers would benefit from the economy of scale  
19 of a combined wastewater operation.

20 **Q. ARE YOU AWARE OF OTHER TRANSFER CASES WHERE FUTURE**  
21 **CONNECTION FEES HAVE BEEN PART OF THE PURCHASE PRICE?**

22 **A.** Yes. Future connection fees have been recognized by the Commission as part of  
23 the purchase price in other transfer applications. In response to a data request from  
24 Sandler Utilities, the Public Staff replied: “To my knowledge, the Sandler-

1 Currituck transfer is the only transfer filed with the Commission with an APA that  
2 provides payment to the seller for future connections to the utility system being  
3 transferred.”

4 I have not done a comprehensive search of such cases, but my legal counsel has  
5 provided the following example where the purchase price included a value for  
6 future connections. In Docket Nos. W-1300, Sub 10, and W-1082, Sub 4, there  
7 was a transfer of the Twin Lake Farm water system from Dutchman Creek, Inc., to  
8 Old North State Water Company, LLC (“Twin Lake Farm Transfer Proceeding”).

9 The Commission’s February 4, 2016, Order stated in Finding of Fact No. 4:

10 Dutchman and Old North State entered into an Asset Purchase  
11 Agreement dated November 21, 2014, for Old North State to  
12 purchase from Dutchman all the Twin Lake water utility system  
13 facilities for the purchase price of \$50,000, plus \$600 per connection  
14 for the next 12 lots to receive water service for which Dutchman has  
15 already installed the distribution water main and a number of  
16 services.

17 In Twin Lake Farm Transfer Proceeding, the \$50,000 purchase price was more than  
18 the original cost net investment of Dutchman even without counting the additional  
19 purchase price of \$7,200 for future connections, and there was no positive  
20 acquisition adjustment, so the \$7,200 was not relevant to the determination of rate  
21 base for the buyer. Nonetheless, the additional purchase price was recognized by  
22 the Commission in the findings of fact. In this transfer proceeding, the additional  
23 purchase price for future connections in the Fost and Flora subdivisions is relevant  
24 to the transfer from Sandler Utilities to CWS because the purchase price without



1 the additional amount for future connections is less than the original cost net  
2 investment of Sandler Utilities.

3 In the Commission’s Order in Twin Lake Farm Transfer Proceeding, denying a  
4 positive acquisition adjustment to allow the higher of the purchase price or seller’s  
5 rate base to become the rate base for the buyer, the Commission relied on Public  
6 Staff testimony that “[a]ny benefits accruing to the Dutchman customers as a result  
7 of the proposed transfer would not outweigh the cost of including the excess  
8 purchase price in rate base.” The main point of this Order is that benefits to the  
9 seller’s customers must outweigh the amount of purchase price in excess of the  
10 seller’s rate base before the purchase price can be included in the buyer’s rate base.

11 The situation in the Twin Lake Farm transfer proceeding is different from the  
12 position of Sandler Utilities in the present case, where Sandler Utilities supports a  
13 rate base for CWS equal to the original cost net investment of Sandler because the  
14 full purchase price, including the \$88,900 for future connections, is greater than the  
15 original cost net investment of Sandler. However, it is appropriate for the  
16 Commission to recognize that connection fees are part of the purchase price in the  
17 present case just as it did in the Twin Lake Farm case.

18 **Q. ARE YOU AWARE OF OTHER CASES WHERE FUTURE CONNECTION**  
19 **FEES WERE CONSIDERED AS PART OF THE PURCHASE PRICE?**

20 **A.** Yes, although as noted previously, my analysis is the result of a non-comprehensive  
21 search and there could be other cases that neither I nor legal counsel have  
22 discovered yet. The next example is the transfer of the water system for Currituck

1 Club from The Currituck Associates to Carolina Water Service, Inc. of North  
2 Carolina. The August 20, 2001, Order in Docket No. W-354, Sub 249 states in  
3 Finding of Fact No. 9:

4 The purchase price for the initial facilities is \$100,000. In addition,  
5 CWS will also pay the Seller one half of each water tap-on fee  
6 collected on residential lots of numerical designation 300 or higher,  
7 the Center Court homesites, and any future homesites outside of  
8 Magnolia Bay, and the Club Cottages (approximately 252 lots at  
9 \$1,000 per lot will be reimbursed to the seller, for a total purchase  
10 price of \$352,000). Net plant in service at the time of transfer is  
11 greater than the \$352,000 total purchase price, therefore, CWS is  
12 entitled to include in rate base only the purchase price paid for the  
13 acquired facilities.

14 Clearly there are transfer cases where the Commission has recognized future  
15 connection fees as a proper component of the purchase price. In Docket No. W-  
16 354, Sub 249, the Commission accepted the amount for future connections as part  
17 of the purchase price that became the rate base for the buyer.

18 Therefore, the Public Staff is incorrect in suggesting the position of Sandler Utilities  
19 and CWS on this issue is unique to the present docket.

20 **Q. SHOULD THE COMMISSION CONSIDER THE ECONOMY OF**  
21 **SCALE BENEFITS THAT A COMBINED WASTEWATER SYSTEM**  
22 **WOULD PROVIDE TO THE EAGLE CREEK CUSTOMERS, ALONG**  
23 **WITH THE FOST AND FLORA CUSTOMERS?**

24 **A.** My legal counsel has informed me that the applicable statutory authority for  
25 Commission consideration of this transfer application is N.C. Gen. Stat. § 62-  
26 111 (a), which states in pertinent part:

1 No franchise now existing or hereafter issued under the  
2 provisions of this Chapter, other than a franchise for motor carriers  
3 of passengers shall be sold, assigned, pledged or transferred, nor  
4 shall control thereof be changed through stock transfer or otherwise,  
5 or any rights thereunder leased, nor shall any merger or combination  
6 affecting any public utility be made through acquisition or control  
7 by stock purchase or otherwise, except after application to and  
8 written approval by the Commission, which approval shall be given  
9 if justified by the public convenience and necessity.

10 N.C. Gen. Stat. § 62-111 (a), has been interpreted by the North Carolina Court of  
11 Appeals to require the Commission to inquire into all aspects of anticipated services  
12 and rates occasioned and engendered by the proposed transfer. *See Utilities*  
13 *Commission v. Village of Pinehurst*, 99 N.C. App. 224, 393 S.E.2d 111 (1990),  
14 *disc. review allowed*, 328 N.C. 97, 402 S.E.2d 427, *aff'd*, 331 N.C. 278, 415 S.E.2d  
15 199 (1992). In *Village of Pinehurst*, the Court made it clear that the correct legal  
16 standard for considering a transfer application is as follows: “[W]hen the  
17 Commission is adjudging public convenience and necessity in the context of  
18 proposed transfers of water and sewer franchises under G.S. § 62411(a), it must  
19 inquire into *all* aspects of anticipated service and rates occasioned and  
20 engendered by the proposed transfer, and then determine whether the transfer  
21 will serve the public convenience and necessity.”

22 The Public Staff witnesses’ position—that the amount of \$88,900 should be  
23 denied because it does not provide a direct benefit to just the Eagle Creek  
24 customers—is contrary to the enunciated legal standard. It is clear that the  
25 Commission must weigh all benefits, and for all customers.

1 **Q. WILL YOU PLEASE SUMMARIZE YOUR REBUTTAL ON THIS**  
2 **ISSUE?**

3 **A.** Yes. It would be manifestly unfair to ignore the full price being paid by CWS as  
4 an excuse to lower the rate base for CWS. CWS has testified to the economies of  
5 scale that will benefit the Eagle Creek customers, as well as the Fost and Flora  
6 customers, if the transfer is approved. In most transfer cases in which there is no  
7 positive acquisition adjustment, the Commission approves the rate base for the  
8 buyer as the lesser of the seller original cost net investment or the purchase price.  
9 That same approach is proper for the present case. In taking that approach, the  
10 amount of the purchase price should include the full amount to be paid by the buyer  
11 (CWS), and should not exclude the value of future connection fees as recommended  
12 by the Public Staff. The result in Docket No. W-354, Sub 249, supports Sandler's  
13 position on this issue in the present case.

14 **Q. IS SANDLER UTILITIES PERMITTED TO TERMINATE THE APA AND**  
15 **NOT PROCEED WITH THE SALE OF THE EAGLE CREEK**  
16 **WASTEWATER SYSTEM TO CWS IF IT IS NOT SATISFIED WITH THE**  
17 **AMOUNT OF THE RATE BASE?**

18 **A.** Yes. Section 4.2(c) of the APA gives Sandler Utilities the right to terminate the  
19 agreement in the event that Sandler is not satisfied with the amount of the rate base  
20 established by the Commission.

21 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

22 **A.** Yes.