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September 1, 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
WLI Investments, LLC, Complainant, v. Old North State Water
Company, Inc. and Pluris Hampstead, LLC, Respondents
Docket Nos. W-1300, Sub 77 and W-1305, Sub 35
Response to WLI Investments, LLC's Motion to Compel

Dear Ms. Dunston:

On behalf of Old North State Water Company (ONSWC) and Pluris Hampstead, LLC (Pluris), together (Respondents), we herewith submit Response to WLI Investments, LLC's Motion to Compel in the above referenced matter and dockets.

If you should 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
Old North State Water Company, Inc.

pbb
Enclosure

cc: All parties and counsel of record
NC Public Staff

A Pennsylvania Limited Liability Partnership

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**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. W-1305, Sub 35
DOCKET NO. W-1300, Sub 77

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	
WLI Investments, LLC, 60 Gregory)	
Road, Suite 1, Belville, NC 28451,)	
Complainant,)	
)	
v.)	
)	
Old North State Water Company, Inc.)	
and Pluris Hampstead, LLC,)	
Respondents.)	
)	
		RESPONSE TO WLI INVESTMENTS, LLC's MOTION TO COMPEL

NOW COME Pluris Hampstead, LLC ("Pluris") and Old North State Water Company, Inc. ("ONSWC," together with Pluris, "Respondents") and respond as follows to the Motion to Compel Responses to WLI Investments' Data Request No. 1 ("Motion to Compel").

1. On August 23, 2022, WLI Investments, LLC ("WLI"), served upon the Respondents its Data Request No. 1 ("WLI DR 1"). ONSWC and Pluris separately filed objections to parts of WLI DR 1 on August 24, 2022, and August 25, 2022, respectively. On August 29, 2022, WLI filed its Motion to Compel. The WLI DR 1 and the Respondents' objections are attached to the Motion to Compel.

2. The Motion to Compel states the N.C. Gen. Stat. § 1A-1, Rule 26, standard that information may be sought in discovery if it is reasonably calculated to lead to discovery of admissible evidence. While the Rules of Civil Procedure are not binding on the Commission, this is the standard expressly applied in the objections asserted by ONSWC and Pluris. In order to be admissible, evidence must be relevant.

Although courts interpret Rule 26 broadly in civil actions, that rule is not without its limits. Our courts have recognized that even liberal discovery has its limits. Rule 26, though generous, should not be construed as an invitation for parties “to roam at will in the closets of others.” *Reynolds Am., Inc. v. Third Motion Equities Master Fund, Ltd.*, 2018 NCBC LEXIS 115, at *5, 2018 WL 5870626 (N.C. Super. Ct. Nov. 7, 2018) (alteration, citation, and quotation marks omitted). “Courts can and should curb discovery when it would be . . . ‘unduly burdensome or expensive.’” N.C. R. Civ. P. 26(b)(1a). *Addison Whitney, LLC v. Cashion*, No. 17 CVS 1956, 2020 NCBC 48 ¶ 11 2020 WL 3096793 (N.C. Super. Ct. June 10, 2020).

It is well settled that “[o]ne party's need for information must be balanced against the likelihood of an undue burden imposed upon the other.” *Willis v. Duke Power Co.*, 291 N.C. at 34. Likewise, “our state trial courts are permitted to limit discovery where ‘justice requires it’ to protect a party or person, including a corporate executive, ‘from unreasonable annoyance, embarrassment, oppression, or undue burden or expense.’” N.C. R. Civ. P. 26(c). *See, e.g., Tennessee–Carolina Transp., Inc. v. Strick Corp.*, 291 N.C. 618, 629, 231 S.E.2d 597, 603 (1977). *See Hall v. Wilmington Health, PLLC*, ___ NC App. ___, 872 S.E.2d 347, 361 (2022). The scope of discovery, and the ability of a party to burden another party with overly broad discovery requests, is subject to limits.

3. This dispute concerns the interpretation of the December 13, 2018, development agreement between WLI and ONSWC (“2018 Agreement”) relating to the Salters Haven residential development. WLI is the developer of the Salters Haven residential development in Pender County. The Complaint here specifically concerns the

type of wastewater collection system to be installed by WLI in an area of land adjacent to **but outside of** WLI's Salter's Haven development.

4. It is understood that when WLI purchased the land for the Salters Haven development from Mr. Bert Lea, Mr. Lea retained ownership of an adjoining tract and WLI committed to provide sewer service to that area at some point in the future. This adjoining tract is referred to in the 2018 Agreement as the Extended Service Area ("ESA") and is commonly known as the Lea Tract.

5. The ESA/Lea Tract is not part of the Salters Haven development, is not part of ONSWC's certificated service area, and thus is not one of the Transfer Areas to be acquired by Pluris pursuant to the Asset Purchase Agreement between ONSWC and Pluris and the resulting Transfer Application pending in Dockets W-1305, Sub 29 and W-1300, Sub 69 (the "Transfer Dockets").

6. In WLI's Petition to Intervene filed in the Transfer Dockets on March 8, 2021, it alleged that "ONSWC made specific commitments for the provision of wastewater services to the Subdivision and the 30 additional residential sites referenced herein but has failed to honor those commitments."¹ In its Complaint in the present dockets WLI alleges "the impairment or breach of WLI Investment's contract rights under a 2018 contract."² 7.

7. The dispute presented both in that Petition to Intervene and in the present dockets is about whether the 2018 Agreement entitles WLI to install grinder pumps and low pressure facilities in the ESA/Lea Tract. Doing so would allow WLI to avoid incurring the cost of installing a gravity wastewater collection system to serve the ESA and shift

¹ WLI Petition to Intervene ¶ 13

² Complaint and Request for Declaratory Ruling p. 1.

much of the cost of installing a collection system for that area from WLI to future homeowners.

8. One of the WLI data requests objected to by Respondents, WLI DR 1 Item 2, states: "Please provide copies of all documents in your possession that reference 'Salters Haven,' 'Salter's Haven,' or 'Salters' Haven.'" In its Motion to Compel, WLI asserts that this information could lead to discovery of admissible evidence because WLI has reason to believe this information could show (a) that Pluris was "exerting operational control" over ONSWC; (b) that there was unreasonable discrimination by Pluris against WLI; and (c) that there was "unjust and unreasonable" coordinated actions by the Respondents.

First, as stated in ONSWC's objections, the issue in the Complaint and Petition for Declaratory Ruling is whether, under the 2018 Agreement that is the subject of the Complaint WLI is entitled to install a low pressure sewer collection system in the ESA/Lea Tract adjacent to the Salters Haven development. Pluris is not party to that Agreement and this issue must be decided based on the contract terms contained within the four corners of the 2018 Agreement between ONSWC and WLI. Second, the 2018 Agreement includes the following provisions:

17.10. Entire Agreement. This writing embodies the entire agreement and understanding between the Parties hereto and there are no other agreements or understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.

17.11. Modifications in Writing. This Agreement shall not be modified, amended or changed in any respect except in writing, duly signed by the parties hereto, and each party hereby waives any right to amend this Agreement in any other way. By mutual written agreement additional lots may be added to this Agreement.

These are the contractual provisions that WLI voluntarily entered. Consequently, the only records that could be reasonably calculated to lead to admissible evidence would be the 2018 Agreement and any modifications in writing, duly signed by WLI and ONSWC.

Section 4 of the 2018 Agreement addresses the collection system to be installed by WLI in the Salters Haven development; Section 5 and related definitional provisions of that Agreement address the collection system to be installed by WLI in the ESA/Lea Tract. Efforts to compel production of extraneous documents outside the Agreement in an attempt to contravene the terms of the 2018 Agreement or otherwise establish contractual obligations beyond what is stated in that Agreement are not reasonably calculated to lead to admissible evidence.

WLI contends that “the 2018 contract does not expressly prohibit the installation of grinder pumps and low-pressure facilities.” WLI then argues that its assertion on that point entitles it to seek extrinsic parole evidence which would conflict with the plain terms of the 2018 Agreement. This argument is undercut on two fronts: First, as noted above, the 2018 Agreement contains a merger clause in Section 17.10 which includes an affirmative statement that that written agreement “embodies the entire agreement and understanding between the Parties.” It is well settled North Carolina law that this language, reflecting that the four corners of the 2018 Agreement contain the party's entire agreement, precludes WLS effort to now rewrite the agreement in an effort to avoid the cost of installing a gravity collection system to serve the ESA/Lea Tract.

Second, Section 4 of the 2018 Agreement addresses WLI's installation of the collection system in the Salters Haven development, and it affirmatively provides for installation of some grinder pumps in portions of the Salters Haven development. The same

language is not found in Section 5 and related definitions, which addresses the collection system to be installed in the ESA/Lea Tract by WLI. Suffice it to say that pointing out that the 2018 Agreement does not affirmatively prohibit something does not evidence some ambiguity in that contract. WLI as Complainant has the burden of proof. WLI's argument that "the 2018 contract does not expressly prohibit the installation of grinder pumps and low-pressure facilities" fails to show it has a contractual right in the 2018 Agreement that would entitle WLI to grinder pumps and low-pressure facilities, and the merger clause means that any contractual right can only arise in the Agreement (or written, signed amendments to it). Other records are not admissible to establish WLI contract rights outside of the 2018 Agreement.

9. In addition, the type of overly broad discovery pursued by WLI would be an unduly burdensome time-consuming imposition on the Respondents, as they would have to search for the specified words among years of written and electronic records. WLI argues that the request for all documents containing some form of "Salters Haven" is not overly broad because it is "specific as to time, place, and subject matter." Suffice it to say that no such limitations are apparent, as WLI DR 1 Item 2 calls for production of "all documents in your possession that reference 'Salters Haven,' 'Salter's Haven,' or 'Salters' Haven.'" There are absolutely no limitations as to time or place, and no limitation as to subject matter – other than inclusion of any form of the words "Salters Haven."

WLI's Motion to Compel ignores the fact that this request would entail review of every written record, paper and electronic, maintained by both Respondents, to determine if one of the specified words were present. For paper records, that means reading all of them. For electronic records, a word search can be conducted if the file format is word

searchable, but nonetheless the effort to individually search every saved email and separate electronic file would be enormously time-consuming. It is not apparent how WLI has limited this request in time or place, though it claims to meet those restrictions.

10. The breadth of this request also gave rise to Pluris' objection based on attorney-client privilege; this request calls for every document either Respondent possesses that includes the "magic words," which would necessarily include all privileged correspondence between the Respondents and their respective counsel. Compilation of the privilege log that WLI blithely advocates be produced in its Motion to Compel would require the same search as described above; every letter and email to or from counsel and their respective clients would have to be located and identified. There is simply no adequate basis for the extent of the burden WLI seeks to impose on the Respondents here.

11. Item 3 in the WLI DR 1 states: "Please provide copies of documents that reference the purchase and transfer of utility franchise presently held by ONSWC for service to Majestic Oaks, Majestic Oaks West, Southside Commons (f/k/a Grey Bull), and Salters Haven, approval of which is presently pending before the Commission." This suffers from the same discovery flaws as described above for Item 2. Any rights that WLI has are dependent on the 2018 Agreement with ONSWC and any written modifications signed by both parties. Other extraneous documents, meaning the records sought in WLI DRs 1, Items 2 and 3, would not legally alter the terms of that Agreement and thus would not be admissible.

12. In addition, WLI's argument that its ostensible allegations of "operational control," "discrimination," "refusal to cooperate," and "coordinated actions" support these discovery requests fails. WLI has no rights as a utility customer with respect to the

ESA/Lea Tract. Claims of unreasonable discrimination or some sort of unreasonable collusion that violate the statutes and rules overseen by the Commission would apply to customers in certificated service areas. This is clear from the Commission's January 11, 2022, Order Denying Motion to Intervene and Finding Motion for Reconsideration Moot in Docket No. W-1300, Sub 56, where the Commission *sua sponte* denied WLI's Petition to Intervene.³

13. WLI's reliance on its allegations against Pluris of "operational control over ONSWC" and "discrimination against grinder pumps" in support of its Motion to Compel are subject to fatal flaws. First, there is no credible basis for the claim that Pluris has somehow seized "operational control" of ONSWC, which owns and operates dozens of separate utility systems in North Carolina. With regard to the Salters Haven system (which, again, **does not include the ESA/Lea Tract**) and the other ONSWC service areas that are the subject of the Transfer Dockets, Pluris and ONSWC have negotiated sale and transfer terms at arm's length, which terms are reflected in the Asset Purchase Agreement filed in those dockets. As reflected in the Transfer Dockets, due to environmental regulatory compliance issues with ONSWC's existing Majestic Oaks wastewater treatment plant the Commission authorized Pluris to temporarily provide bulk service to ONSWC for wastewater originating from Salters Haven and the other transfer areas. That Commission-approved arrangement in no way amounts to "operational control" or any type of undue influence by Pluris over ONSWC. Indeed, in light of the functional and compliance problems with

³ In its Motion for Reconsideration filed in that docket, WLI asserted that "there is an unresolved dispute between WLI Investments and ONSWC and Pluris Hampstead, LLC, related to the proper interpretation of the Development Agreement between WLI Investments and ONSWC..." (Motion ¶ 7.c).

the Majestic Oaks wastewater treatment plant, there is a strong public interest, to the benefit of customers and all parties, for transfer of the franchise from ONSWC to Pluris.

Pluris' view on the use of grinder pump systems is no secret. When WLI petitioned to intervene in the Transfer Dockets, ONSWC filed a letter dated March 23, 2021,⁴ stating "the December 13, 2018 Contract between WLI and ONSWC does not allow a low pressure system for the Lea Tract and instead provides for a gravity system with a force main to serve the Lea Tract," and cited Pluris' objection to use of grinder pumps in the EAS/Lea Tract. Pluris subsequently filed a letter in the Transfer Dockets on April 15, 2021,⁵ advising that it agreed with ONSWC's reading of the relevant terms of the 2018 Agreement. Relevant to WLI's new claim of discrimination, Pluris stated the following in that letter:

Finally, as the proposed transferee of the ONSWC franchise and assets which are the subject of the Transfer Application filed in these dockets, Pluris has advised WLI's counsel that Pluris will not agree to the installation of a low pressure system to serve the ESA. Pluris appreciates that WLI would prefer to avoid the cost of installing the lift station provided for in Section 5.2, but **based on its experience in dealing with such systems elsewhere, and the inevitable issues with the grinder pumps necessitated by such systems, Pluris does not favor use of low pressure systems and will not willingly agree to installation of low pressure systems.**

(Emphasis added).

14. Pluris dislike for grinder pump systems and the operational problems that attend them is no secret. Pluris is aware of no Commission rule obligating it to embrace the use of such systems – and thus is aware of no obligation to "cooperate with WLI" regarding use of such a system in the ESA/Lea Tract. With regard to WLI's effort to secure discovery as to its claim that Pluris is "discriminating" against WLI and its goal of installing grinder pumps in the EAS/Lea Tract, it bears reminding here that (1) Pluris has

⁴ <https://starw1.ncuc.gov/NCUC/ViewFile.aspx?Id=79e3ad4f-30f6-4643-9eee-318b98a41022>

⁵ <https://starw1.ncuc.gov/NCUC/ViewFile.aspx?Id=ff37cba4-82bd-4e40-9609-832d3d241321>

no contractual relationship with WLI and WLI is not a customer of Pluris; (2) the ESA/Lea Tract is not part of any public utility's assigned service area; (3) Pluris has not acquired the Salters Haven service area and is not an assignee of the 2018 Agreement between ONSWC and WLI; and (4) Pluris is not currently subject to any regulatory obligation regarding provision of utility service to WLI or the ESA/Lea Tract. Those inconvenient facts undermine the pursuit of discovery based on these various unfounded WLI claims.

15. For the same reason, Pluris objected to WLI DR 1, Item 8, which requested "copies of any executed contracts between Pluris and any real estate developer that contain the phrase "grinder pumps." As previously noted (1) Pluris has no contractual relationship with WLI and WLI is not a customer of Pluris; (2) the ESA/Lea Tract is not part of any public utility's assigned service area; (3) Pluris has not acquired the Salters Haven service area and is not an assignee of the 2018 Agreement between ONSWC and WLI; and (4) Pluris is not currently subject to any regulatory obligation regarding provision of utility service to WLI or the ESA/Lea Tract. Pluris is not party to any service agreement with WLI, is not obligated to allow use of grinder pumps under any known Commission rules, and has no obligation to agree to WLI's use of grinder pumps. There is simply no legitimate basis for requiring Pluris, under these circumstances, to provide the requested documents. In its objection, Puris noted that WLI can access its filed development agreements in the various sub-dockets of Docket W-1305, which is certainly an adequate response under the circumstances presented here.

Based on the foregoing, Respondents respectfully request that the Motion to Compel be denied.

Respectfully submitted, this the 1st day of September, 2022.

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By: /s/ David T. Drooz

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Attorney for Pluris Hampstead, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Response to WLI Investments, LLC's Motion to Compel has been served on all parties or their counsel of record in these dockets by either depositing same in a depository of the United States Postal Service, first-class postage prepaid and mailed by the means specified below, or by electronic delivery.

This the 1st day of September, 2022.

FOX ROTHSCHILD LLP

By: /s/ David T. Drooz

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