

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. W-1300, SUB 60

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application by Old North State Water Company,)
LLC,¹ 3212 6th Avenue South, Suite 200,)
Birmingham, Alabama 35222, for Authority to) **PUBLIC STAFF BRIEF**
Adjust and Increase Rates for Water Utility)
Service in All Service Areas in North Carolina)

¹ On July 12, 2022, Old North State Water Company, Inc., made an undocketed filing notifying the Commission of the Company's conversion from a limited liability company (LLC) to a C Corporation. Included with the filing were the Articles of Incorporation Including Articles of Conversion that were filed with the North Carolina Department of the Secretary of State, indicating that effective July 11, 2022, the Company's name is Old North State Water Company, Inc.

TABLE OF CONTENTS

FACTUAL BACKGROUND	1
ARGUMENT	3
1. John McDonald should be designated as a public utility under the de facto utility doctrine for the purpose of ensuring that sufficient capital is available to ONS to provide reliable and sufficient utility service to ONS's customers.	3
2. The Commission has the authority to void or reform, in whole or in part, the loan documents between ONSWC and other entities under the common ownership of Mr. McDonald, all of which should have been filed with the Commission under N.C.G.S. §§ 62-153 and 62-161.	7
3. The Commission can void or reform loan documents without violating the Due Process Clause of the Fourteenth Amendment to the United States Constitution so long as the changes are reasonable and necessary to serve the public interest.	9
4. The term affiliate as used in N.C.G.S. § 62-153 and § 62-160 is broader than the term public utility, which means that any entity Mr. McDonald owns or controls is an affiliate of ONSWC.	10
CONCLUSION	14

Factual Background

Old North State Water Company's (ONSWC's) ownership, history of negative operating income, external sources of funding, and operational, legal, and financial relationships with the following entities have been discussed multiple times over the course of this proceeding: Chatham North Holdings, Inc.; ONSWC-Chatham North, LLC; Integra Water, LLC; Integra Water-Creola, LLC; Integra Water-Madison County, LLC; and Integra Water, LLC-Vinemont, LLC. Many of the facts surrounding those issues are undisputed.

1. John McDonald is the majority owner of ONSWC. Mr. McDonald operates ONSWC. He is the President of ONSWC in its present form as a C-corporation. He has represented to this Commission that he was the only manager of ONSWC when it previously operated as a limited liability company.

2. Mr. McDonald is the sole owner and manager of Integra Water, LLC (Integra), and all of its operating subsidiaries, which include Integra Water-Creola, LLC; Integra Water-Madison County, LLC; and Integra Water, LLC-Vinemont, LLC (collectively, the Integra Entities).

3. Chatham Holdings, Inc. (CNH), is a North Carolina corporation formed on or about November 7, 2018. CNH has two shareholders: Integra and Two Rivers Holdings, LLC. Integra is the majority shareholder by way of its 95% ownership interest in CNH. CNH, in turn, is the sole owner of ONSWC-Chatham North, LLC, (ONSWC-CN), a North Carolina limited liability company formed in November 2018. ONSWC-CN was formed, at least in part, to bifurcate ONSWC's

wastewater operations in the Briar Chapel service area and ONSWC’s water and wastewater operations in other parts of North Carolina. Mr. McDonald is the President of CNH.

4. ONSWC, Integra, the Integra Entities, and CNH are all controlled by Mr. McDonald.

5. **[BEGIN CONFIDENTIAL]** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] **[END CONFIDENTIAL]**

6. ONSWC has a \$5 million outstanding Note Receivable with CNH. ONSWC has not received any remuneration from CNH. Detailed information about these notes is shown in CONFIDENTIAL Appendix A.

7. ONSWC did not obtain Commission approval of any of the debt instruments shown in either appendix, which violates at least one provision of Chapter 62.

8. **[BEGIN CONFIDENTIAL]** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

9. Mr. McDonald, in his role as manager, has obligated Integra to continue to fund ONSWC. This obligation is not documented in a written guarantee.

10. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END

CONFIDENTIAL]

11. Mr. McDonald has not provided any forward-looking financial information for Integra to support its ability to financially support ONSWC going forward. Mr. McDonald has refused to provide information about his personal financial capability to demonstrate his ability to financially support Integra if the need arises again.

Argument

- 1. John McDonald should be designated as a public utility under the de facto utility doctrine for the purpose of ensuring that sufficient capital is available to ONSWC to provide reliable and sufficient utility service to ONSWC’s customers.**

According to a N.C. Gen. Stat. § 62-3(23)a.2., a public utility is “a person . . . owning or operating in this State equipment or facilities for: . . . 2. [d]iverting,

developing, pumping, impounding, distributing or furnishing water to or for the public for compensation; or operating a public sewerage system for compensation . . .” The de facto utility doctrine allows the Commission to exercise its jurisdiction over persons engaging in activities reserved for Commission-recognized public utilities. Under the de facto utility doctrine, a person may be determined to be a public utility if he owns facilities used to furnish water and sewer service to the public and receives on-going compensation for the use of those facilities. The Commission has determined individuals to be de facto utilities in the past, and this designation was upheld on appeal. See *State ex rel. Utils. Comm'n v. Buck Island, Inc.*, 162 N.C. App. 568, 592 S.E.2d 244, (2004), *State ex rel. Utils. Comm'n v. Carolina Water Serv.*, 165 N.C. App. 163, 598 S.E.2d 179, (2004), *disc. review denied*, 359 N.C. 414 (2005).

The following facts are undisputed: (1) ONSWC is a public utility under Chapter 62 of the North Carolina General Statutes; (2) Mr. McDonald is the president, chief executive officer, and majority owner of ONSWC; (3) Mr. McDonald unilaterally controls the way in which ONSWC uses its assets to provide water and wastewater service to the public¹; and (4) Mr. McDonald is the ultimate recipient of the compensation ONSWC receives from the public. Mr. McDonald may, therefore,

¹ See Direct Testimony of John McDonald, October 2023 T. vol. 2, 29, Docket No. W-1300, Sub 60, where Mr. McDonald states:

My responsibilities with ONSWC include general oversight of ONSWC's day-today operations, and direct oversight of all corporate, compliance, finance, and regulatory matters related to ONSWC. I am also responsible for the strategic direction of ONSWC.

be determined to be a public utility under the de facto utility doctrine and the Commission has a sufficient basis for making that designation.

It is necessary in this matter and at this time to designate Mr. McDonald as a de facto public utility to ensure that ONSWC has sufficient low-cost capital to provide adequate and reliable utility service. **[BEGIN CONFIDENTIAL]** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **[END CONFIDENTIAL]** Earlier in this proceeding, Mr. McDonald indicated that he was the sole owner of Integra and as Manager of ONSWC and sole owner of Integra, he has “been responsible for the management and oversight of both companies since their inception.” Rate Case T. vol. 2, 30. Further, Mr. McDonald indicated that ONSWC receives all of its funding from Integra. Rate Case T. vol. 2, 66. Mr. McDonald noted that he had the authority to commit Integra to continue the financing of ONSWC’s requirements and committed Integra to do so. Rate Case T. vol. 2, 75-76. But this commitment has not been reduced to a “written agreement for financial support”. Rate Case T. vol. 2, 99.

[BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]

While Mr. McDonald's verbal commitment under oath, as Manager of Integra, to continue funding ONSWC should be given the appropriate weight, the Public Staff agrees with former Commissioner Clodfelter's statement to Mr. McDonald that he [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]
[REDACTED] [END CONFIDENTIAL]

October 2023 T. vol. 5, 35. This was reiterated by Commissioner McKissick, who stated: [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL] October 2023 T. vol. 5, 51-52.

Under these particular circumstances, [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED] [END

CONFIDENTIAL] and Integra is not under the Commission's jurisdiction, it is appropriate for the Commission to determine that Mr. McDonald is a de facto utility to ensure that ONSWC's operations continue to have adequate funding. As it stands, Integra has no legal obligation to continue funding ONSWC. Once ONSWC appears to be in a condition where it is not as dependent on Integra, the Commission could consider rescinding this designation.

2. **The Commission has the authority to void or reform, in whole or in part, the loan documents between ONSWC and other entities under the common ownership of Mr. McDonald, all of which should have been filed with the Commission under N.C.G.S. §§ 62-153 and 62-161.**

The Commission is given the authority to void or reform contracts made by public utilities in multiple sections of Chapter 62. "[T]he Commission . . . has the power and authority to modify or abrogate contracts of a public utility if they do not serve the public welfare. N.C. Gen. Stat. §§ 62-30 and 62-32 (2003); *In re Application by C&P Enterprises, Inc.*, 126 N.C. App. 495, 499, 486 S.E.2d 223, 226, *disc. review denied*, 347 N.C. 136, 492 S.E.2d 36 (1997); *State ex rel. Utils. Comm'n v. Buck Island, Inc.*, 162 N.C. App. 568, 579, 592 S.E.2d 244, 251, (2004). *See also State ex rel. Utils. Comm'n v. Carolina Water Serv.*, 165 N.C. App. 163, 172, 598 S.E.2d 179, 185, (2004).

The first instance is included in the Commission's overarching authority to regulate public utilities established in N.C.G.S. § 62-2. As the Commission noted

in its Order Requiring Provision of Service Subject to Condition issued in Docket No. W-354, Sub 236 on March 20, 2001,

Public utilities . . . do not have an unfettered right to enter into contracts with other entities. Under clearly established North Carolina law, “[p]ublic utilities have the right to enter into contracts between themselves or with others, free from the control or supervision of the State, so long as such contracts are not unconscionable or oppressive and do not impair the obligation of the utility to discharge its public duties.” Halifax Paper Company, Inc., v. Roanoke Rapids Sanitary District, 232 N.C. 421, 429, 61 S.E.2d 378 (1950). “The authority to regulate includes the prerogative to recognize private agreements that may have been entered into between parties with respect to the operation of a public utility, as such agreements may be ‘in the interest of the public.’” In re Application of C & P Enterprises, Inc., 126 N.C. App. 495, 499, 486 S.E.2d 233 (1997), *dis. rev. den.*, 347 N.C. 136, 492 S.E.2d 36 (1997). Although contracts between utilities and other entities “are enforceable in the courts” “[u]ntil abrogated or modified by the Commission,” “the Commission is not required to recognize these private agreements and such contracts are subject to modification or abrogation upon a showing that the contracts do not serve the public welfare.” In re Application of C & P Enterprises, Inc., 126 N.C. App. 495, 499, 486 S.E.2d 233 (1997), *dis. rev. den.*, 347 N.C. 136, 492 S.E.2d 36 (1997). As a result, the Commission has the authority to recognize, abrogate, or modify contracts between public utilities and other parties in order to protect the public interest.

The powers and authority related to utility contracts discussed above are buttressed by the Commission’s explicit authority to approve or disapprove contracts between a utility and its affiliates set forth in N.C.G.S. § 62-153. The Commission may, after a hearing, disapprove a contract between a public utility and its affiliate if the Commission finds that the contract is “unjust or unreasonable, and made for the purpose or with the effect of concealing, transferring, or dissipating the earnings of a public utility.” N.C.G.S. § 62-153(a).

The loan documents for the long-term debts between ONSWC and Integra and the Integra entities discussed at length in, and attached as exhibits to, the Public Staff Report on ONSWC's Compliance with Laws and Recapitalization Plan filed in this docket by the Public Staff on December 12, 2022, are public utility contracts subject to modification under N.C.G.S. § 62-2. The loan documents are also affiliate contracts that must be pre-approved under N.C.G.S. § 62-153 because, as discussed below, all entities under the common control of Mr. McDonald are affiliates of ONSWC. The loan documents are also subject to the preapproval requirement in N.C.G.S. § 62-161 because the loans have repayment terms in excess of two years.

Based on the foregoing, the Commission can void or reform the loan documents upon a finding that (1) the loan documents do not serve the public welfare; or (2) the loan documents are (i) unjust or unreasonable and (ii) made for the purpose or with the effect of concealing, transferring, or dissipating ONSWC's earnings. The Commission must hold a hearing prior to voiding or reforming the loan documents on the basis that they are (i) unjust or unreasonable and (ii) made for the purpose or with the effect of concealing, transferring, or dissipating ONSWC's earnings.

- 3. The Commission can void or reform loan documents without violating the Due Process Clause of the Fourteenth Amendment to the United States Constitution so long as the changes are reasonable and necessary to serve the public interest.**

The Commission may exercise the authority it has been granted under Chapter 62 of the North Carolina General Statutes to void or reform contracts without running afoul of the Constitution so long as the Commission's actions are (1) reasonable; and (2) produce significant public good. *Buck Island* at 581, 592 S.E.2d at 252.

4. The term affiliate as used in N.C.G.S. § 62-153 and § 62-160 is broader than the term public utility, which means that any entity Mr. McDonald owns or controls is an affiliate of ONSWC.

The term affiliate is used in Chapter 62 multiple times but is not defined in the definitions section of the statute, N.C.G.S. § 62-3, or the sections where the term is used. When terms used in a statute are unclear or ambiguous, the principles of statutory interpretation step in to provide that definition. *Lanvale Props., LLC v. County of Cabarrus*, 366 N.C. 142, 154, 731 S.E.2d 800, 809-10 (2012).

The North Carolina Supreme Court has held that “[u]ndefined words are accorded their plain meaning so long as it is reasonable to do so.” *Jeffries v. Cty. of Harnett*, 259 N.C. App. 473, 493, 817 S.E.2d 36, 38, *disc. review denied*, 372 N.C. 297, 826 S.E.2d 710 (2019). The Court further held that “standard, nonlegal dictionaries” are an appropriate guide when the Court is determining the plain meaning of undefined terms. *Id.*

According to the New Oxford American Dictionary, an affiliate is “a company, an organization, etc. that is connected with or controlled by another larger one.”

Affiliate, *New Oxford American Dictionary*,

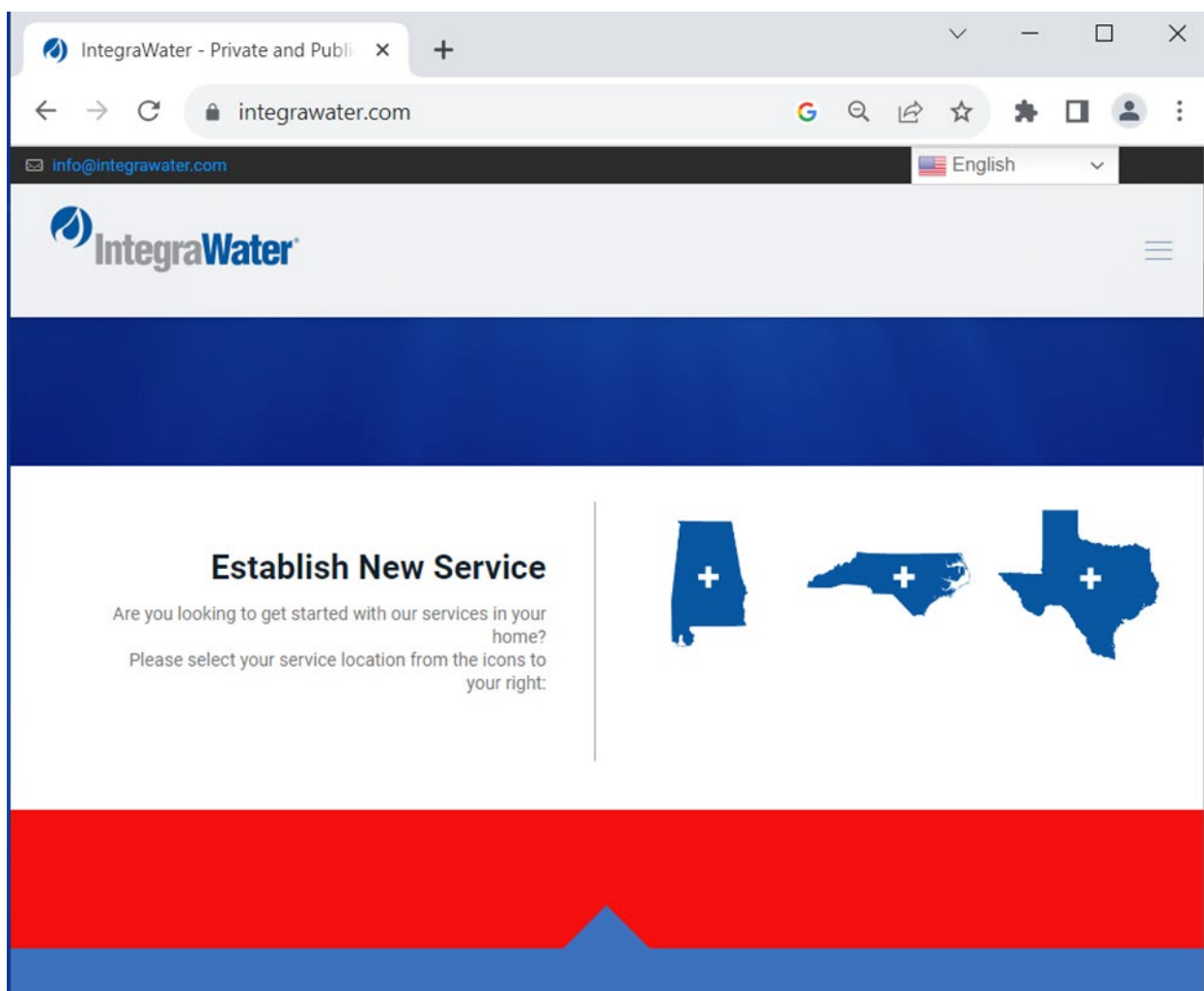
https://www.oxfordlearnersdictionaries.com/us/definition/american_english.

Additionally, according to Merriam-Webster, an affiliate is “an affiliated person or organization” when such person or organization is “closely associated with another typically in a dependent or subordinate position.” *Affiliate*, *Merriam-Webster*, <https://www.merriam-webster.com/>.

Further support for defining affiliate consistent with the definitions found in the New Oxford American Dictionary and Merriam-Webster is found in the definition of the phrase “affiliated companies” used by the National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts (USOA). According to the USOA guidance on Long-term Debt in Account 223 – Advances from Associated for Class B Water Utilities, affiliated companies are “companies or persons that, directly or indirectly, through one or more intermediaries, control, or are controlled by, or are under common control with, the accounting company.” NARUC USOA for Class B Water Utilities (1996), 8. In this case, ONSWC is the accounting company.

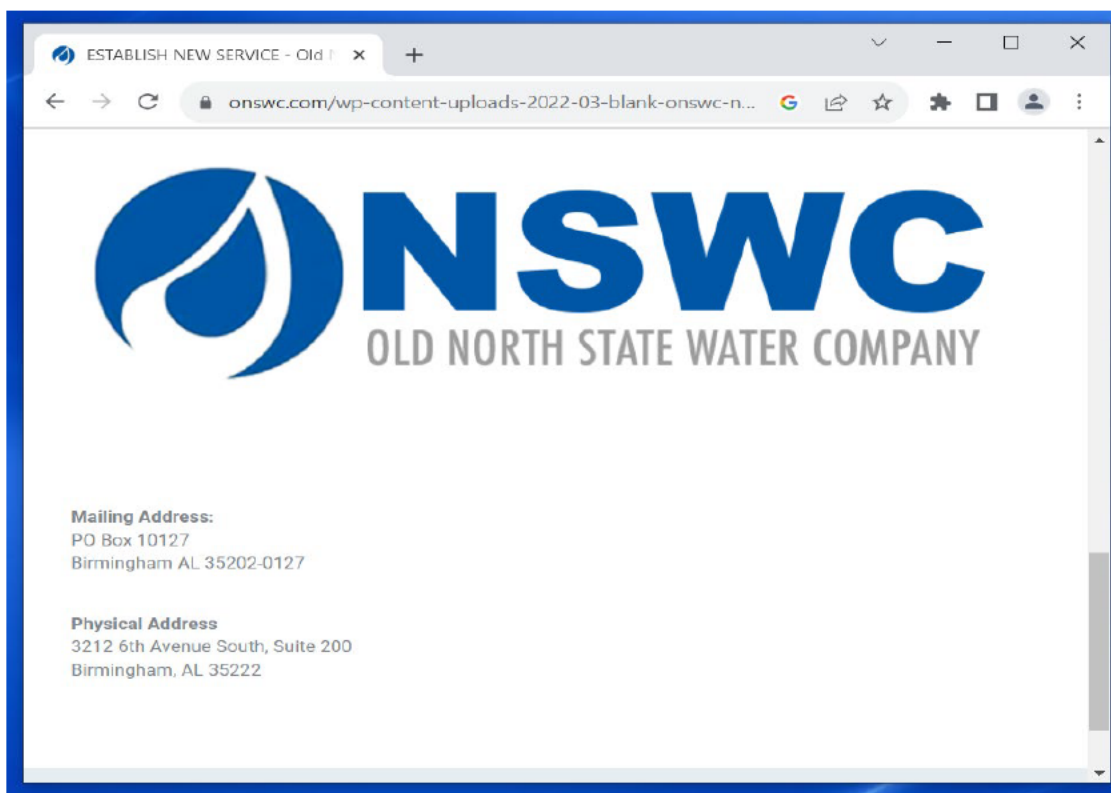
Based on the foregoing, for purposes of N.C.G.S. §§ 62-51, 62-153, and 62-160, a person or entity is an affiliate of a public utility when the person or entity is connected with the public utility. It is important to note that an affiliate under Chapter 62 can, but need not be, a public utility under N.C.G.S. § 62-2(23). A person or entity can be an affiliate of a public utility even if the person or entity does not have an ownership interest in the public utility. The term affiliate is, therefore, broader than the term public utility.

The resolution of the questions regarding whether ONSWC, Integra, and the Integra Entities are affiliates should be informed by publicly available information about ONSWC and Integra and the perception that information creates. Information on Integra's website implies a direct link between Integra and ONSWC.² See the image of a portion of Integra's website shown below.



² <http://integrawater.com> (last visited on Nov. 19, 2023).

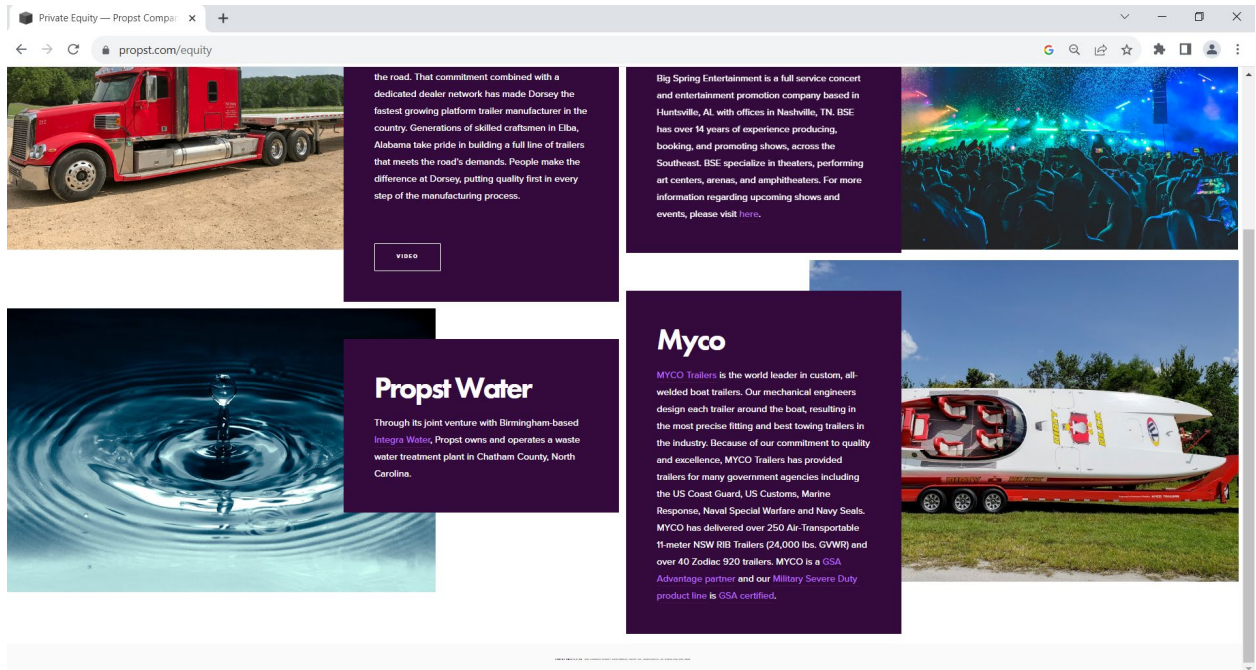
The North Carolina icon, when selected, links directly to ONSWC's website.³ ONSWC's website does little to dispel this perception. As shown in the two images below, the two companies' icons are very similar, and the physical and mailing addresses are identical.



Additionally, the website of third-party investors also directly links Integra to wastewater options in North Carolina.⁴

³ <https://onswc.com/wp-content/uploads-2022-03-blank-onswc-nc-customer-service-application-contract-pdf/> (last visited on Nov. 19, 2023).

⁴ <http://propst.com/equity> (last visited Nov. 19, 2023).



In this case, Mr. McDonald and any entity he owns or controls are connected with and, therefore, affiliates of ONSWC. This is clear from the legal relationships and public representations by ONSWC, Integra, and Integra’s third-party investors.

Conclusion

As demonstrated in the discussion above, the Commission has a number of tools at its disposal to ensure that the public interest is not undermined by ONSWC’s repeated failures to seek approval of contracts and debt instruments between affiliates, thereby depriving the Commission of the opportunity to scrutinize whether the contracts are in the public interest. The Commission should immediately use those tools to, at a minimum, declare that (1) Mr. McDonald is a public utility under the de facto utility doctrine; and (2) all entities that he owns or controls, directly or indirectly, are affiliates of ONSWC. After having made both of those declarations, the Commission should consider whether the public interest

warrants further action related to the loan documents that have received repeated attention during this proceeding.

Respectfully submitted this the 20th of November, 2023.

PUBLIC STAFF
Christopher J. Ayers
Executive Director

Lucy A. Edmondson
Chief Counsel

Gina C. Holt
Manager, Legal Division, Natural Gas,
Water, Sewer, Telephone, and
Transportation Sections

Electronically submitted
/s/ Reita D. Coxton
Staff Attorney

4326 Mail Service Center
Raleigh, North Carolina 27699-4300
Telephone: (919) 733-6110
Email: reita.coxton@psncuc.nc.gov

DOCKET NO. W-1300, Sub 60
PUBLIC STAFF BRIEF CONFIDENTIAL APPENDIX A

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. W-1300, SUB 60

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application by Old North State Water Company, LLC, 3212 6th Avenue South, Suite 200, Birmingham, Alabama 35222, for Authority to Adjust and Increase Rates for Water Utility Service in All Service Areas in North Carolina)
PUBLIC STAFF
PROPOSED ORDER

HEARD: Monday, October 2, 2023, at 1:00 p.m., and continuing as required through Monday, October 9, 2023, Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

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

APPEARANCES:

For Old North State Water Company, Inc.:

Gray Styers and Elizabeth Sims Hedrick, Fox Rothschild, LLP,
434 Fayetteville Street, Suite 2800, Raleigh, North Carolina
27601

For the Using and Consuming Public:

Reita D. Coxton, Staff Attorney, Public Staff – North Carolina
Utilities Commission, 4326 Mail Service Center, Raleigh, North
Carolina 27699-4300

BY THE COMMISSION: On July 3, 2019, Old North State Water Company, LLC¹ (ONSWC or Company), filed a letter pursuant to Commission Rule R1-17(a) notifying the North Carolina Utilities Commission (Commission) of its intent to file a general rate case application. On April 7, 2021, ONSWC filed an updated letter of intent with the Commission.

On June 29, 2021, ONSWC filed its verified Application to Adjust and Increase Rates for Water Utility Service in All Service Areas in North Carolina (Application). The Company's proposed rates would result in an overall revenue increase of approximately 68% and an increase in the average monthly bill for the majority of ONSWC's service areas of approximately 71%, although the exact amount of increase in monthly bills would vary by individual subdivision and customer usage. Along with the Application, the Company filed the direct testimony of John McDonald, Manager of ONSWC, and Laurie Oakman, Accounting Manager of Integra Water, LLC (Integra).²

By order issued July 26, 2021, the Commission declared the matter to be a general rate case pursuant to N.C. Gen. Stat. § 62-137, suspended the proposed

¹ On July 12, 2022, Old North State Water Company, Inc., made an undocketed filing notifying the Commission of the Company's conversion from a limited liability company (LLC) to a C Corporation. Included with the filing were the Articles of Incorporation Including Articles of Conversion that were filed with the North Carolina Department of the Secretary of State, indicating that effective July 11, 2022, the Company's name is Old North State Water Company, Inc.

² Mr. McDonald is the sole owner and member of Integra Water, LLC and its subsidiaries (Integra Water – Creola, Integra Water – Madison County, and Integra Water – Vinemont). Integra's subsidiaries are hereinafter referred to generically as an Integra Entity or Integra Entities. When referenced with specificity, they are either Creola, Madison County, or Vinemont.

new rates for up to 270 days pursuant to N.C.G.S. § 62-134, and established the test year period for this case as the 12-month period ending December 31, 2020.

On July 29, 2021, ONSWC filed a revised version of John McDonald's direct testimony with corrections to ONSWC's net income loss, expenses, and revenue requirement referenced in his testimony. The corrections were made for consistency with the numbers reflected in the Application and Laurie Oakman's direct testimony.

On September 21, 2021, the Commission issued an Order Scheduling Hearings, Establishing Discovery Guidelines, and Requiring Customer Notice (Scheduling Order) which required the parties to prefile testimony and exhibits, scheduled the matter for hearing, and required notice of the proposed rate increase and hearings to all affected customers. That order scheduled a customer hearing to be held remotely via Webex on October 7, 2021, in two sessions at 1:30 p.m. and 6:30 p.m. and scheduled an expert witness hearing in Raleigh, North Carolina on December 2, 2021. The Company filed a Certificate of Service notifying the Commission that the required notice to customers had been provided on September 22, 2021.

The intervention and participation in this docket by the Public Staff of the North Carolina Utilities Commission (Public Staff) is made and recognized pursuant to N.C.G.S. § 62-15(d) and Commission Rule R1-19(e). No other party intervened in this proceeding.

On October 5, 2021, the Public Staff and ONSWC filed a joint motion to cancel the first session of the customer hearing scheduled to begin at 1:30 p.m. due to the absence of any registered witnesses. The Commission granted that motion by order on October 6, 2021.

On October 7, 2021, the later session of the customer hearing scheduled to begin at 6:30 p.m. was held as scheduled via Webex. The following public witnesses provided testimony: Melissa Bertonica, Chuck Mosher, Brian Vervynckt, Anthony Noto, Thomas Flynn, Cynthia Black, Martin Francis Kallukalam, Jolieann Kilpatrick, Mary Matton, Jeffrey Craig, Mayuri Coleman, and Nicholas Aronne. In addition to testimony at the customer hearing, various consumer statements of position were filed with the Commission.

On October 13, 2021, the Company filed its response to Public Staff Data Request Nos. 33 and 55. The response included references to supporting files that present an update to ONSWC's revenues, expenses, and rate base. Also on October 13, 2021, the Public Staff filed a motion requesting that its direct testimony filing date be extended to November 2, 2021, and the Company's rebuttal testimony filing date be extended to November 15, 2021. The Company did not object to this motion.

On October 27, 2021, ONSWC filed its report on customer comments received in the customer hearing.

On October 27, 2021, ONSWC and the Public Staff filed a Joint Motion to Extend Testimony Filing Deadlines and Reschedule Expert Witness Hearing. By

order issued on November 16, 2021, the Commission rescheduled the expert witness hearing to March 8, 2022, and extended several filing deadlines, which included the deadlines for (i) ONSWC's update to its revenues, expenses, rate base, and cost of capital; (ii) the Public Staff's direct testimony; and (iii) ONSWC's rebuttal testimony (First Extension Order).

On November 23 and 24, 2021, ONSWC filed updates to its revenues, expenses, rate base, and cost of capital (Update Filing).

On November 29, 2021, ONSWC filed a Notice of Intent to Place Temporary Rates into Effect, and Motion for Approval of an Undertaking and for Approval of Notice of Temporary Rates and Approval of Notice of Rescheduled Hearing (Temporary Rates Notice and Motion). On December 14, 2021, the Commission issued an Order Accepting Financial Undertaking and Approving Notice to Customers of Rescheduled Hearing and Temporary Rates (Interim Rates Order).

On January 11, 2022, ONSWC filed a Certificate of Service demonstrating that its customers were provided notice of interim rates and the rescheduled expert witness hearing.

On January 28, 2022, the Public Staff filed a Motion of the Public Staff for Waiver of Deadlines and Extension of Time to File Testimony. On February 1, 2022, the Commission issued an Order Granting Motion of the Public Staff for Extensions of Time (Second Extension Order).

On February 8, 2022, the Public Staff filed the direct testimony and exhibits of Charles M. Junis, Director of the Water, Sewer, and Telephone Division; John R. Hinton, Director of the Economic Research Division; and Iris Morgan, Financial Analyst in the Accounting Division, Water Section. Witness Junis testified about a number of issues related to ONSWC's (1) billing practices and (2) accounting practices related to plant-in-service.

On February 22, 2022, the Company filed the rebuttal testimony and exhibits of witnesses McDonald and Oakman.

On February 24, 2022, ONSWC filed a motion to file rebuttal to Public Staff's supplemental testimony.

On March 1, 2022, the Public Staff filed the supplemental testimony and exhibits of witnesses Junis and Morgan. Witness Junis's provided additional testimony about the billing and accounting practices initially discussed in his direct testimony.

On March 3, 2022, the Commission issued an Order Allowing Supplemental Testimony and Supplemental Rebuttal Testimony and Providing for Limited Discovery.

On March 4, 2022, ONSWC filed the supplemental rebuttal testimony and exhibit of witness Oakman. Witness Oakman's testimony included ONSWC's response to Public Staff witness Junis's testimony regarding ONSWC's accounting practices related to plant-in-service.

On March 7, 2022, the Public Staff and ONSWC filed a joint motion to excuse all witnesses from appearing at the evidentiary hearing, noting that the parties had informed the Commission on March 3, 2022, that a settlement-in-principle resolving all issues had been reached. The joint motion was dated on Sunday, March 6, 2022, and was received by the Commission for filing on March 7, 2022. It stated that a settlement agreement was being filed contemporaneously and that settlement testimony and exhibits would be filed by March 7, 2022.

On March 8, 2022, the Commission issued an Order Rescheduling Expert Witness Hearing and Denying Motion to Excuse Witnesses, which postponed the expert witness hearing until 1:00 p.m. on March 8, 2022.

On March 8, 2022, the parties filed the Joint Settlement Agreement and Stipulation (Settlement Agreement), with accompanying exhibits (Stipulation Exhibits). The parties' agreement on issues related to ONSWC's capital structure and financial viability are set forth in sections IV.A and IV.B, which read as follows:

IV. A. As the authorized representative of Integra Water, LLC, John McDonald commits Integra Water, LLC, to continue financing the capital needs of ONSWC and inject any necessary funding to allow ONSWC to continue meeting its capital and operational needs in an amount sufficient to permit ONSWC to meet its reasonable capital expenditure needs as well as its normal day-to-day operational expenses necessary to provide good quality, reliable, water service to the customers of ONSWC consistent with environmental and regulatory requirements.

IV. B. The Public Staff withdraws its recommendation for an infusion of equity to achieve an actual capital structure of 50% debt and 50% equity and its recommendation that ONSWC file audited financial

statements with the Commission for the next three years.

ONSWC filed the settlement testimony of witness McDonald and a rate case expense update as Oakman Late-Filed Exhibit I. The Public Staff filed the settlement testimony and exhibits of witnesses Junis, Hinton, and Morgan.

On March 8, 2022, the evidentiary hearing for expert witnesses was held in Raleigh, North Carolina as scheduled. All prefiled testimony and exhibits of ONSWC and Public Staff witnesses were admitted into the record, along with the initial rate case application and the October 27, 2021 Report on Customer Comments from the Company. Company witnesses McDonald and Oakman and Public Staff witnesses Junis, Morgan, and Hinton testified in response to questions from the Commission and follow-up questions by counsel for ONSWC. The Commission requested five late-filed exhibits from ONSWC and one late-filed exhibit from the Public Staff.

On March 11, 2022, ONSWC submitted four of the five late-filed exhibits the Commission requested. The late-filed exhibits are (1) the Articles of Organization for ONSWC, Corrected ONSWC Articles, and the ONSWC Operating Agreement; (2) a letter explaining the typographical error that caused the difference between Oakman Rebuttal Exhibit 2 and the Public Staff's (Junis) corresponding exhibit with regard to purchased water systems; (3) confidential consolidated and consolidating financial statements for Integra for the period ending on September 30, 2021; and (4) confidential documentation related to ONSWC's note receivable and notes payable (specifically, (i) Intercompany Promissory Note from Chatham

North Holdings, Inc. to ONSWC, dated December 4, 2020; (ii) Intercompany Promissory Note from ONSWC to Integra dated January 1, 2019; (iii) Intercompany Promissory Note from ONSWC to Integra dated December 4, 2020; (iv) Intercompany Promissory Note from ONSWC to Integra Water Creola, LLC, dated January 1, 2019; (v) Intercompany Promissory Note from ONSWC to Integra Water Madison County, LLC, dated January 1, 2019; and (vi) Intercompany Promissory Note from ONSWC to Integra Water Vinemont, LLC, dated January 1, 2019) (collectively, Intercompany Promissory Notes).³

On March 16, 2022, ONSWC submitted the fifth and final late-filed exhibit requested during the evidentiary hearing, specifically its response to the consumer statement of Nicholas Egan.

Also on March 16, 2022, ONSWC filed a motion to correct ownership information in the present docket and 27 other ONSWC sub-dockets, noting that John McDonald and not Integra owned the 95% interest in ONSWC. The motion further clarified that Integra is a source of financing for ONSWC but that Integra is not the parent company of ONSWC. This filing was made to correct information included in multiple new franchise applications and clarify portions of ONSWC witness McDonald's prefiled rebuttal testimony.

On March 21, 2022, the Public Staff filed its late-filed exhibit regarding ONSWC's capital structure and debt classification.

³ The Intercompany Promissory Notes are hereinafter individually referred to, respectively, as: CNH Note Receivable; 2019 Integra Note Payable; 2020 Integra Note Payable; Creola Note Payable; Madison County Note Payable; and Vinemont Note Payable.

On March 29, 2022, the Commission issued an Order Accepting Late-Filed Exhibits, Requesting Further Late-Filed Exhibits, and Setting Date for Filing of Briefs and Proposed Orders (Further Late-Filed Exhibits Order). In this order, the Commission admitted the late-filed exhibits previously filed by both parties into the evidentiary record and ordered the parties to submit a joint proposed order within 30 days. The Further Late-Filed Exhibits Order also ordered ONSWC to file four additional late-filed exhibits and prospectively admitted those exhibits into the evidentiary record upon filing. The additional late-filed exhibits requested were (1) a copy of the signed promissory note from ONSWC to Integra Madison County, LLC, if a signed note exists; (2) loan agreements dated January 2019 and December 2020, referenced in the promissory notes ONSWC gave to various Integra affiliates; (3) the December 4, 2020 loan agreement between Chatham North Holdings, Inc., and ONSWC referenced in the Chatham note receivable held by ONSWC; and (4) a written explanation, under oath, of the reasons why Integra's consolidated and consolidating balance sheets show that ONSWC's financial results are not consolidated with Integra's.

On March 31, 2022, ONSWC filed the following documents in response to the Further Late-Filed Exhibits Order: (1) a written explanation, under oath, of the reasons why Integra's consolidated and consolidating balance sheets show that ONSWC's financial results are not consolidated with Integra's; (2) a confidential copy of the signed promissory note from ONSWC to Integra Madison County, LLC; (3) the December 4, 2020, loan agreement between Chatham North Holdings, Inc., and ONSWC (CNH Security Agreement); and (4) confidential loan agreements

referenced in the promissory notes ONSWC filed on March 11, 2022 (specifically, (i) Intercompany loan security from ONSWC to Integra dated January 1, 2019, (ii) Intercompany loan security from ONSWC to Integra Water Madison County, LLC, dated January 1, 2019, (iii) Intercompany loan security from ONSWC to Integra Water Vinemont, LLC, dated January 1, 2019, (iv) Intercompany loan security from ONSWC to Integra Water Creola, LLC, dated January 1, 2019, and (v) Intercompany loan security from ONSWC to Integra dated December 4, 2020)⁴ (collectively, Intercompany Security Agreements).⁵ On March 31, 2022, ONSWC also filed a new update to its rate case expense and stated that the update had been reviewed by the Public Staff and incorporated all adjustments from the Public Staff. No party objected to these exhibits being received into evidence.

On April 14, 2022, ONSWC filed an additional late-filed exhibit at the request of Commission Staff: a confidential Guaranty Agreement by ONSWC-Chatham North, LLC in favor of ONSWC (Chatham North Guaranty Agreement). No party objected to this exhibit being received into evidence.

On April 26, 2022, the Public Staff filed Stipulation Exhibit I REVISED and Stipulation Exhibit II REVISED (Final Stipulation Exhibits). The Company reviewed

⁴ The intercompany loan security agreements are hereinafter individually referred to, respectively, as: 2019 Integra Security Agreement; 2020 Integra Security Agreement; Creola Security Agreement; Madison County Security Agreement; and Vinemont Security Agreement.

⁵ A promissory note and intercompany loan security agreement together comprise what is hereinafter referred to as an intercompany loan contract. The intercompany loan contracts for each promissory note-security agreement combination are hereinafter individually referred to, respectively, as: 2019 Integra Intercompany Loan Contract; 2020 Integra Intercompany Loan Contract; Creola Intercompany Loan Contract; Madison County Intercompany Loan Contract; and Vinemont Intercompany Loan Contract. The aforementioned intercompany loan contracts are collectively known as the Intercompany Loan Contracts.

the exhibits before filing and did not identify any issues. Also on April 26, 2022, the Public Staff filed Junis Settlement Exhibit 1 (Revised). No party objected to these exhibits being received into evidence.

On April 28, 2022, the Company and the Public Staff filed a Joint Proposed Order.

On June 13, 2022, the Commission issued its Order Approving Settlement Agreement and Stipulation, Granting Partial Rate Increase, and Requiring Customer Notice (Rate Case Order). Ordering Paragraph 8 required the Parties to work together to resolve the income tax-related issue with plant-in-service.⁶ Ordering Paragraph 9 required the Parties to work together on determining the amount of refund due to customers based upon ONSWC's decision to place interim rates into effect under bond.⁷ Ordering Paragraph 12, reproduced below, established requirements related to ONSWC's (1) funding needs; (2) relationships

⁶ Events related to this ordering paragraph are as follows:

- (1) On September 22, 2022, the Parties filed an update stating that "ONSWC and the Public Staff are continuing to work on the [income tax-related issue] with the goal of arriving at a mutually agreeable solution by the next deadline set forth in Ordering Paragraph 8 of the Rate Case Order.;" and
- (2) On October 11, 2022, the Public Staff filed a letter stating that it is satisfied with ONSWC proposed methodology for handling income tax gross-up on contributions in aid of construction for the impacted systems.

⁷ Events related to this ordering paragraph are as follows:

- (1) On June 29, 2022, the Company filed public and confidential versions of its Proposed Credit Adjustment Calculations for Refund of Temporary Rates (Refund Proposal);
- (2) On July 13, 2022, the Public Staff filed the Response of Public Staff to ONSWC's Proposed Credit Adjustment Calculations for Refund of Temporary Rates (Response) stating that the Public Staff (i) agrees with the Company's Refund Proposal and (ii) recommends that the Commission issue an order approving the refund schedule and requiring the Company to make the refunds to customers within 30 days of the order; and
- (3) On July 29, 2022, the Commission issued its Order Approving Refund Schedule and Requiring Company to Make Refunds to Customers Within 30 Days.

with other entities owned, controlled, or both by Mr. McDonald; and (3) compliance with applicable legal authorities.

That pursuant to N.C.G.S. § 62-34, the Public Staff shall thoroughly review the various sources of funding utilized by ONSWC for its capital and operational needs, the funds disbursed by ONSWC to Chatham North Holdings, Inc., and the relationships, operating agreements, and contracts between and among the Company, Integra, the Integra affiliates, and Chatham North Holdings, Inc.; including whether they are reasonable, appropriate, and in conformity with North Carolina law and Commission Rules, including but not limited to N.C.G.S. §§ 62-153, 62-160, and 62-167. Within six months of the date of this Order, the Public Staff shall make a report to this Commission regarding the Company's compliance with applicable North Carolina law. ONSWC shall have the opportunity to respond to the Public Staff's report within 30 days of the filing of such report. Additionally, the parties shall work together to create a plan to improve the capitalization of the Company, and the parties shall make a report to the Commission within six months of the date of this Order regarding the recapitalization plan[.]

The Public Staff began sending ONSWC data requests to gather information it deemed pertinent to the further investigation the Public Staff was ordered to complete in Ordering Paragraph 12.

On July 22, 2022, the Company filed Old North State Water Company Objection to Discovery (Objection), stating its objections to a portion of one of the Public Staff's data requests, item 12 of Data Request 73, which sought a Statement of Net Worth of John McDonald, along with continuing updates of such statements. ONSWC asserted that Integra, and not Mr. McDonald personally, made a commitment to fund the Company's operations. ONSWC stated that it finds the

request unwarranted and abusive in that Mr. McDonald's personal financial information would be disclosed to members of the Public Staff "who have taken positions adverse to him in several dockets." ONSWC requested an order from the Commission stating that it need not provide the information requested in item 12 of the Public Staff's Data Request 73 and that the Public Staff shall not conduct discovery on Mr. McDonald's personal finances in the future.

The Public Staff filed the Motion of Public Staff to Compel on August 2, 2022 (Motion to Compel). In the Motion to Compel, the Public Staff noted that the Commission had directed it to "thoroughly review the various sources of funding utilized by ONSWC for its capital and operational needs" and argued that it could not thoroughly evaluate Integra's ability to financially support the Company if it cannot evaluate Mr. McDonald's ability to support Integra.

On September 1, 2022, the Commission issued its Order Denying Motion to Compel and Granting in Part and Denying in Part Relief Sought by Old North State Water Company, Inc. (Order on Motion to Compel) denying the Motion to Compel. The Commission stated that it cannot compel Mr. McDonald to make his personal assets available to the Company, and thus would not compel Mr. McDonald to provide his personal financial information under the circumstances and justification currently presented in the Motion. The Commission cautioned ONSWC that (1) nothing in its Order prevents the Public Staff or the Commission from drawing inferences that logically flow from Mr. McDonald's refusal to make his financial information available and (2) nothing in its Order prevents the Commission — in this docket or any other — from requiring the Company to raise

additional capital and from imposing consequences if it does not. The Commission also denied ONSWC's request for an order that the Public Staff may never seek Mr. McDonald's financial information in the future.

On December 12, 2022, the Public Staff filed its Report on ONSWC's Compliance with Laws and Recapitalization Plan (Public Staff Legal Compliance and Recapitalization Report). The Public Staff stated that the following:

1. Integra Water, LLC (Integra) is the parent company for the following entities: Integra Water Madison County, LLC, Integra Water Creola, LLC, and Integra Water Vinemont, LLC, (collectively, the Integra Affiliates). John McDonald is the sole owner of Integra.
2. Chatham North Holdings, Inc. (CNH) is the sole owner of ONSWC-Chatham North, LLC (ONSWC-CN). Integra owns 95% of CNH and Two Rivers Holdings, LLC owns the remaining 5%. Two Rivers Holdings, LLC, is owned by Michael Myers.
3. John McDonald is the sole owner of ONSWC.
4. Pursuant to the definition of "public utility" set out in N.C.G.S. § 62-3(23)c, ONSWC is not an affiliate of Integra, of the Integra Affiliates, nor of CNH, because it does not own any of those entities, nor is it owned by them.
5. ONSWC funds its capital and operational needs using operating revenues and long-term debt issued by Integra or an Integra Affiliate.

6. ONSWC loaned CNH \$5,000,000 in December of 2020 with a maturity date of December of 2024. In connection with that loan, CNH granted ONSWC a security interest in all of its assets and signed a promissory note. ONSWC-CH provided an unconditional guarantee. Mr. McDonald executed the loan agreement on behalf of both ONSWC and CNH. CNH has not repaid any portion of the loan. Based on confidential financial statements it has reviewed, the Public Staff has concerns about CNH's and ONSWC's ability to repay the loan.
7. The Public Staff states that public utilities must get Commission approval before issuing any security pursuant to N.C.G.S. § 62-161(a)2, and that notes are securities under N.C.G.S. § 62-3(26). The Public Staff's opinion is that pursuant to N.C.G.S. § 62-161(a), Old North State should have sought Commission approval for the loan to CNH.
8. As of the date of the Public Staff Report, ONSWC owed Integra and the Integra Affiliates approximately \$13,882,387. The debt is composed of two notes payable, four long-term notes, and nine vehicle "notes," which the Public Staff states are in fact vehicle leases.

9. Because the notes payable and the long-term notes have terms that exceed two years, ONSWC should have received Commission approval prior to issuing them, pursuant to N.C.G.S. § 62-161(a).
10. ONSWC is making monthly payments of approximately \$11,000 on the vehicle “loans” and a note that ONSWC issued to Integra in 2014. There are no signed loan documents relating to this note. Implicitly, although the Public Staff Report does not specify, ONSWC is not making regular payments on the other five notes.
11. The other five notes that ONSWC gave to Integra and the Integra Affiliates are governed by Intercompany Loan and Security Agreements in which ONSWC grants a security interest in all of its assets to the lender. A utility must have Commission permission prior pledging its assets to an affiliate, under N.C.G.S. § 62-160.
12. The Public Staff Report states that it experienced “significant difficulty” obtaining financial statements from ONSWC in a timely fashion. Furthermore, the Public Staff identified multiple instances where ONSWC provided inconsistent financial statements for the same reporting periods in filings in the Commission’s dockets. The Public Staff stated that these issues were concerning and undermine its confidence in the accuracy of financial information ONSWC has provided to the Commission and the Public Staff, as well as Integra’s

and ONSWC's accounting and financial reporting functions, personnel, and systems.

The Public Staff also stated that the Parties had been unable to reach agreement on a recapitalization plan and made recommended that the Commission take the following actions: (1) schedule an evidentiary hearing; (2) consider declaring Mr. McDonald a *de facto* public utility; (3) order a management audit pursuant to N.C.G.S. § 62-37(b); (4) order a full forensic audit of ONSWC's books and records; and (5) order a full forensic audit of the financial statements of Integra and the Integra Affiliates.

On January 11, 2023, ONSWC filed a Response to Public Staff Report (ONSWC Response to Public Staff Legal Compliance and Recapitalization Report). ONSWC stated that:

1. It accepts responsibility for its "failure to seek advance approval for the promissory note to CNH," which it characterizes as an "unintentional oversight;" stated that it is in the process of acquiring ownership of the assets of ONSWC-CN in satisfaction of the CNH note; and stated that it would inform the Commission when the transaction is complete.
2. It now understands that the definition of security under Chapter 62 is broader than publicly traded securities regulated by the United States Securities and Exchange Commission and that it will seek approval to issue securities in the future.

3. There does not appear to be a clear cure for ONSWC's noncompliance with Chapter 62 related to the notes that ONSWC issued to Integra and the Integra Affiliates other than future compliance".
4. The loans provided necessary financing that no other lender would have been willing to provide and have not materially impaired its operations.
5. The Public Staff did not express any concerns about this arrangement at the time it entered into the Stipulation.
6. It does not agree with any of the Public Staff's proposals for recapitalizing the Company and continues to take the position that there is no functional distinction for the Company between debt and equity, given that Integra is ONSWC's only source of funding.
7. There is no reason to be alarmed by its debt, given that the debt is owned by companies that are also owned by Mr. McDonald, who has every incentive to support the financial success of ONSWC.
8. It rejects the proposal for Integra to forgive some of the Company's debts as unreasonable because this could create taxable income for ONSWC.

9. It questions whether the Commission has the necessary jurisdiction over Integra to enter such an order and whether it would constitute a taking of its property.
10. It continues to reject the proposal for Mr. McDonald to invest additional capital as unnecessary and overreaching and sees no practical benefit to Integra acquiring ONSWC, given that Mr. McDonald, who owns and controls Integra, has already promised to provide financial support to ONSWC.
11. It finds it inappropriate to force Integra, as an unaffiliated company, to acquire ONSWC.
12. It does not support the Commission declaring Mr. McDonald to be a de facto or de jure public utility absent facts supporting a conclusion that ONSWC is not being maintained as a legally separate entity from Mr. McDonald.
13. It does not “believe recapitalization would benefit utility customers or improve financial viability . . . and therefore does not recommend that a portion of the loans be converted to equity at the end of 2024.” But “if the Commission disagrees and for reasons within its lawful authority decides that recapitalization is required, then ONSWC believes the best path toward that goal is to convert enough of the loans to equity such that the capital structure reaches approximately 45% equity at the end of calendar 2023.”

14. It largely accepts the Public Staff's critiques regarding the timeliness and accuracy of its financial statements and explained that the rapid growth of ONSWC and of Integra, which provides some administrative support to ONSWC, have caused the 6 companies to outgrow their accounting staff.
15. It blames a prior owner of ONSWC, Michael Myers, and the owner's contractor, Envirolink, for ONSWC's shortcomings related to regulatory accounting and non-compliance with Commission rules because Mr. Myers and Envirolink were supposed to provide ONSWC guidance in those areas.
16. It is improving its accounting capabilities by adding internal and external resources and, to that end, Integra has hired a new Chief Financial Officer (Joseph Mitchell) and is recruiting an additional individual for its accounting staff.
17. As part of improving the accounting capabilities at Integra, and therefore accounting service provided to ONSWC, Mr. McDonald plans to hire an outside firm in the spring of 2023 to thoroughly review the accounting needs and processes and to perform an accounting review of ONSWC and its financial statements.

ONSWC asked the Commission to deny the Public Staff's recommendations set forth in the Public Staff Legal Compliance and Recapitalization Report.

On May 19, 2023, the Commission issued its Order Requiring Further Reporting and Directing Old North State Water Company, Inc. to Refrain from Certain Actions (Order Requiring Further Reporting). The Order Requiring Further Relief required (1) ONSWC to promptly notify the Commission by a filing in this docket of any financial staff whom it has hired since the date of the Public Staff Report or who are employed by Integra to provide accounting services to ONSWC, such notification to include their professional qualifications; (2) ONSWC to provide the Commission with a copy of the report of the accounting review it has commissioned as soon as practicable, but at any rate no later than [June 19, 2023]; (3) the Public Staff to provide any updates or modifications to recommendations the Public Staff made in the Public Staff Legal Compliance and Recapitalization Report; and (4) the Public Staff to respond to ONSWC's proposal for Integra to convert some of its secured debt to an equity interest in ONSWC. The Commission ordered that ONSWC to refrain from issuing any securities or grant any security interest in its assets without prior approval from the Commission and take no action with respect to the loan to CNH and the guarantee from ONSWC-CN. The Commission also scheduled an evidentiary hearing on July 25, 2023, related to the issues raised and the relief sought in the (1) Public Staff Legal Compliance and Recapitalization Report, (2) ONSWC Response to Public Staff Legal Compliance and Recapitalization Report), and (3) all subsequent reports made in this docket.

On May 25, 2023, ONSWC filed a Motion on Accounting Review and Motion for Extension of Time (ONSWC Accounting Review and Extension of Time Motion),

in which it stated that the review (Outside Accounting Review) had not begun. ONSWC further stated that it had received a proposal from an accounting firm to conduct an external professional review (Outside Accounting Review) and the proposed competition date was July 15, 2023. ONSWC requested an extension of deadline to submit the results of the Outside Accounting Review and postponement of the hearing scheduled for July 25, 2023.

On May 30, 2023, ONSWC filed an Amended Motion to Reschedule Hearing, stating that after further consultation with the Public Staff, it was requesting the hearing to be held between September 1, 2023, and September 15, 2023, in order to give the Public Staff adequate time to review the report of Outside Accounting Review.

On June 7, 2023, ONSWC filed a Supplement to Old North State Water Company's Amended Motion to Reschedule Hearing that provided a copy of the outside accounting firm's Proposal for Accounting and Review Services in order to ensure that the scope of the engagement was clear to the Commission.

On June 12, 2023, the Commission issued its Order Granting Motion of Old North State Water Company, Inc. for an Extension of Time to File Report and Rescheduling Hearing (June 2023 Extension Order). The June 2023 Extension Order extended ONSWC's deadline to submit the results of the Outside Accounting Review until August 4, 2023, and the Public Staff's deadline to notify the Commission of any updates or modifications to the recommendations made in the Public Staff Report, specifically including, but not limited to, its response to

ONSWC's proposal for Integra to convert some of its secured debt to an equity interest in ONSWC until September 5, 2023. Ordering Paragraph 1 of the 2023 Extension Order also defined the scope of the Outside Accounting Review as follows:

the scope of the outside accounting review should include a review of the Company's accounting needs and processes, including an examination of the transactions between Old North State Water Company, Inc. and any of the following: Integra Water, LLC, Integra Water Madison County, LLC, Integra Water Creola, LLC, Integra Water Vinemont, LLC, John McDonald, Chatham North Holdings, Inc., and ONSWC-Chatham North, LLC (ONSWC-CN).

The Commission also provided direction on the upcoming evidentiary hearing in Ordering Paragraphs 5 which states "the focus of the hearing shall be whether the management, operation, and financing of Old North State Water Services, Inc., is consistent with the public interest and the interests of customers." The Commission also identified three witnesses it wanted to examine: Mr. McDonald, Mr. Mitchell, and a member of the engagement team that conducts the outside accounting review of the Company.

On August 4, 2023, ONSWC filed the following documents: (1) Financial Statements as of December 31, 2022 (Reviewed 2022 Financial Statements) and the Independent Accountants' Review Report (Haynes Downard Review Report) ; (2) a letter from Haynes Downard LLP regarding the review dated August 2, 2023 (Haynes Downard Letter); and (3) a Supplemental Memo from ONSWC in regard to the accounting review dated August 4, 2023 (Mitchell Memo) (collectively, Outside Accounting Review Report).

On September 5, 2023, the Public Staff filed a letter regarding the Outside Accounting Review stating that the recommendations made in the Public Staff Legal Compliance and Recapitalization Report remain unchanged.

On September 19, 2023, ONSWC filed a copy of the following financial statements: Balance Sheet as of June 30, 2023; June 2023 Year-to-Date Statement of Operations; and June 2023 Year-to-Date Statement of Cash Flows (collectively, June 2023 Financial Statements).

On September 25, 2023, ONSWC filed a Motion for Approval of Asset Transfer seeking an order approving the transaction described in the motion and valuing the assets to be transferred in the amount set forth in the motion.

On October 2, 2023, the Outside Accounting Review Hearing began. The Outside Accounting Review Hearing continued into October 3, 2023, and concluded on October 9, 2023.

On October 9, 2023, ONSWC filed a Verified Notice of Sole Authorized Agent and Motion for Clarification and Instruction.

On October 12, 2023, the Commission issued a Notice of Due Date of Proposed Orders and/or Briefs that established a deadline of November 13, 2023.

On October 26, 2023, ONSWC filed a Notice of Authorized Representative to Receive Communications and Withdrawal of Motion.

On November 9, 2023, the Public Staff filed a motion requesting a one-week extension to submit proposed orders and/or briefs.

On November 13, 2023, the Commission issued its Order Granting Public Staff's Motion for Extension of Time extending the deadline for submission of proposed orders and/or briefs to November 20, 2023.

Findings of Fact

General Matters

1. ONSWC is duly organized as a public utility operating under the laws of the State of North Carolina and is subject to the jurisdiction of the Commission pursuant to N.C.G.S. § 62-3(23)a.2.

2. John McDonald is the corporate president and chief executive officer of ONSWC and, at minimum, the 95% owner of ONSWC.

3. Mr. McDonald is the sole member and owner of Integra and the Integra Entities.

4. ONSWC, Integra, and the Integra Entities are under the common ownership and control of Mr. McDonald.

5. CNH owns 100% of ONSWC-Chatham North, LLC.

6. Integra owns 95% of CNH. Two Rivers Holdings, LLC owns the remaining 5%.

7. CNH and ONSWC-Chatham North, LLC are under the common control of Mr. McDonald.

Cost Allocation Manual or Plan and Support Services Agreement

8. ONSWC receives support services related to accounting; finance; administration of corporate activities; communications; customer service; billing; human resources; information technology and information systems; operations; rates; regulatory requirements; risk management; and legal matters. The services are provided by Integra personnel and, where applicable, Integra resources.

9. Integra charges ONSWC for support services on a monthly basis. The method Integra uses to track and allocate the cost of shared services between itself and ONSWC is not documented in a Public Staff audit, Commission-approved cost allocation manual or plan. The terms and conditions surrounding how those services are provided is, likewise, not memorialized in a Public Staff-audited or Commission-approved written support services contract.

10. A cost allocation manual or plan and written support services agreement is necessary under these circumstances because ONSWC and Integra are under common control.

11. ONSWC and Integra must prepare a cost allocation manual or plan and a written support services agreement expeditiously. The support services agreement is subject to the requirements of N.C.G.S. § 62-153 and must be filed with, and approved by, this Commission.

ONSWC's Accounting Functions

12. The Public Staff has expressed concerns about ONSWC's accounting policies, procedures, and practices. ONSWC has admitted that its accounting function needed improvement.

13. On page 8 of ONSWC Response to Public Staff Legal Compliance and Recapitalization Report, ONSWC stated that "Mr. McDonald plans to hire an outside accounting firm in the spring of 2023 to thoroughly review the accounting needs and processes and to perform an accounting review of ONSWC and its financial statements."

14. In Ordering Paragraph 2 of the Commission's Order Requiring Further Reporting and Directing Old North State Water Company, Inc. to Refrain from Certain Actions issued on May 19, 2023, the Commission ordered ONSWC to "as soon as practicable, but at any rate no later than 30 days of the date of this Order, ONSWC shall provide the Commission with a copy of the report of the accounting review it has commissioned."

15. ONSWC did not retain a firm to complete the review it promised to undertake in Spring 2023 until the Commission issued an order requiring a copy of the report produced during the review.

16. ONSWC retained Haynes Downard LLP, an accounting firm located in Alabama, to conduct the outside accounting review at some point after May 23, 2023, but before August 3, 2023. The review was completed by Max Campbell.

17. The Commission established the scope of that review in its Order Granting Motion of Old North State Water Company, Inc. for Extension of Time to File Report and Rescheduling Hearing issued on June 12, 2023. The review completed by Haynes Downard LLP did not satisfy the Commission's directive in that Order.

18. Mr. Mitchell's and Mr. Campbell's competence related to utility accounting has not been established, which raises questions about their ability to ferret out problems with ONSWC's accounting processes related to utility accounting.

19. The report prepared in connection with the outside accounting review (Outside Review Report) included 2022 financial statements for ONSWC. Those financial statements (1) are inconsistent with ONSWC's 2022 Annual Report; (2) are inconsistent with financial statements for the same period filed in other dockets; (3) omit key information, and (4) contain errors.

20. The issues with the 2022 financial statements indicate that ONSWC's accounting function continues to need improvement and additional analysis is needed.

21. The outside accounting review completed by Haynes Downard LLP has minimal value because it did not (1) include an in-depth analysis of the notes between and among ONSWC, Integra, the Integra Entities, Chatham North Holdings, Inc., and ONSWC-Chatham North, LLC; (2) examine ONSWC's compliance with utility accounting principles; and (3) discover the errors the Public

Staff identified when it reviewed the 2022 financial statements included in the outside accounting review.

22. An additional assessment of ONSWC's accounting function and the debt instruments is necessary because of the issues with the outside accounting review completed by Haynes Downard LLP.

23. ONSWC should not move forward with a rate case until the additional assessment is completed and any issues identified therein are addressed.

24. It is reasonable and appropriate to require ONSWC to complete the agreed upon procedures engagement under the terms set out in Appendix A and take action to remedy any issues identified.

25. It is also reasonable and appropriate to require ONSWC to resolve the Public Staff's concerns with its accounting processes, books, and records before it files a rate case for any of its systems.

26. It is reasonable and appropriate to require ONSWC to wait until after the Motion to Transfer Assets is fully resolved before it files a wastewater rate case.

ONSWC's Current Financial Situation

27. ONSWC's ability to continue as a going concern is, at this stage, entirely dependent upon funding provided by Integra or an Integra Entity at the direction of Mr. McDonald. The funding is provided as debt, which has resulted in a capital structure composed almost entirely of debt.

28. Integra and the Integra Entities only have one source of paid-in-capital: Mr. McDonald.

29. ONSWC is unable to borrow money from third-party lenders because of its history of losses and debt-laden capital structure.

30. ONSWC depends upon Integra, or an Integra Entity, when its operations do not provide the revenues required to meet its day-to-day needs. Integra depends upon Mr. McDonald when its operations do not provide the revenues required to meet its day-to-day needs and cover the otherwise unmet needs of ONSWC. Mr. McDonald, therefore, is the ultimate source of cash for ONSWC.

31. Mr. McDonald has provided financial statements for Integra for 2022. Those financial statements have not been reviewed or audited to determine whether they accurately reflect Integra's operations or financial standing.

32. Mr. McDonald has stated he will require Integra to continue to fund ONSWC but has not provided any forward-looking information to the Commission or the Public Staff showing that Integra has the ability to continue providing said funding despite the Commission's observation that this information is material.

33. Mr. McDonald has acknowledged that he is the sole source of equity for Integra (and, by extension, ONSWC), but has been unwilling to provide any information to the Commission or the Public Staff showing that he, individually, has

the ability (as opposed to the intention) to continue funding both entities if the need arises despite this Commission’s observation that this information is material.

Financial Exposure Due to Pending Litigation

34. ONSWC is currently involved in litigation in the North Carolina Business Court. Claims exceeding \$2 million have been asserted against ONSWC.

[BEGIN CONFIDENTIAL]

[REDACTED]

[REDACTED]

[END CONFIDENTIAL]

Commission Requested Recapitalization Plan

37. The Public Staff and ONSWC have been unable to agree on a recapitalization plan that would reduce ONSWC’s current debt. The Public Staff put forth three suggestions in the Public Staff Report on ONSWC’s Compliance with Laws and Recapitalization. ONSWC rejected all three suggestions in the ONSWC Response to Public Staff Report and stated that “ONSWC does not believe recapitalization would benefit utility customers or improve financial viability.”

38. The only pathway ONSWC suggested was “to convert enough of the loans to equity such that the capital structure reaches approximately 45% equity at the end of calendar 2024.”

39. ONSWC does not, however, believe such a conversion is appropriate.

Relationship with the Commission and Compliance with Applicable Laws

40. ONSWC’s failure to secure Commission approval of the loans between ONSWC, Integra, the Integra Entities, and CNH violates N.C.G.S. §§ 62-153 and 62-161.

41. There are multiple instances of ONSWC including inaccurate information in filings with the Commission.

42. ONSWC must adhere to applicable laws and Commission Rules at all times.

43. ONSWC must be proactive in its relationship with the Public Staff and this Commission. ONSWC cannot continue its current practices of “self-help” or engaging in conduct that is prohibited and then asking for forgiveness after the fact.

Evidence and Conclusions

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-7 [General Matters]

The evidence supporting these findings of fact is contained in the testimony and exhibits of the witnesses for both parties and the entire record in this proceeding. These findings and conclusions are not contested by any party.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 8-11 [Cost Allocation Manual and Support Services Agreement]

The evidence supporting these findings of fact is contained in the testimony and exhibits of the witnesses for both parties and the entire record in this proceeding.

There is no dispute about the fact that Integra provides services to ONSWC and receives compensation for those services. Public Staff witness Boswell testified that written agreements between related parties, frequently referred to as affiliate agreements, are common and are used to ensure that utility customers are not disadvantaged when a utility does business with a related party. Public Staff witness Boswell further testified that an affiliate agreement is necessary on these facts because Mr. McDonald owns and controls the entity receiving service and the entity providing those services. An affiliate agreement and related cost allocation manual or plan would ensure that costs for shared personnel and accounting systems are allocated fairly between Integra, the Integra Entities, and ONSWC. An affiliate agreement can also be used to address another Public Staff

concern Public Staff witness Boswell articulated: the security of North Carolina ratepayers' personal information that is stored in a shared billing system. Steps must be taken to safeguard North Carolina ratepayers' privacy and those measures can be articulated in an affiliate agreement. Tr. vol. 2, 30.

In response to questions from Commissioner Clodfelter, ONSWC witnesses McDonald and Mitchell acknowledged that an agreement between ONSWC and Integra and the Integra Entities is necessary. Tr. vol. 5, 45.

If ONSWC plans to continue doing business and sharing systems with Integra, then an affiliate agreement and underlying cost allocation manual or plan must be submitted for Commission consideration and approval under N.C.G.S. § 62-153.

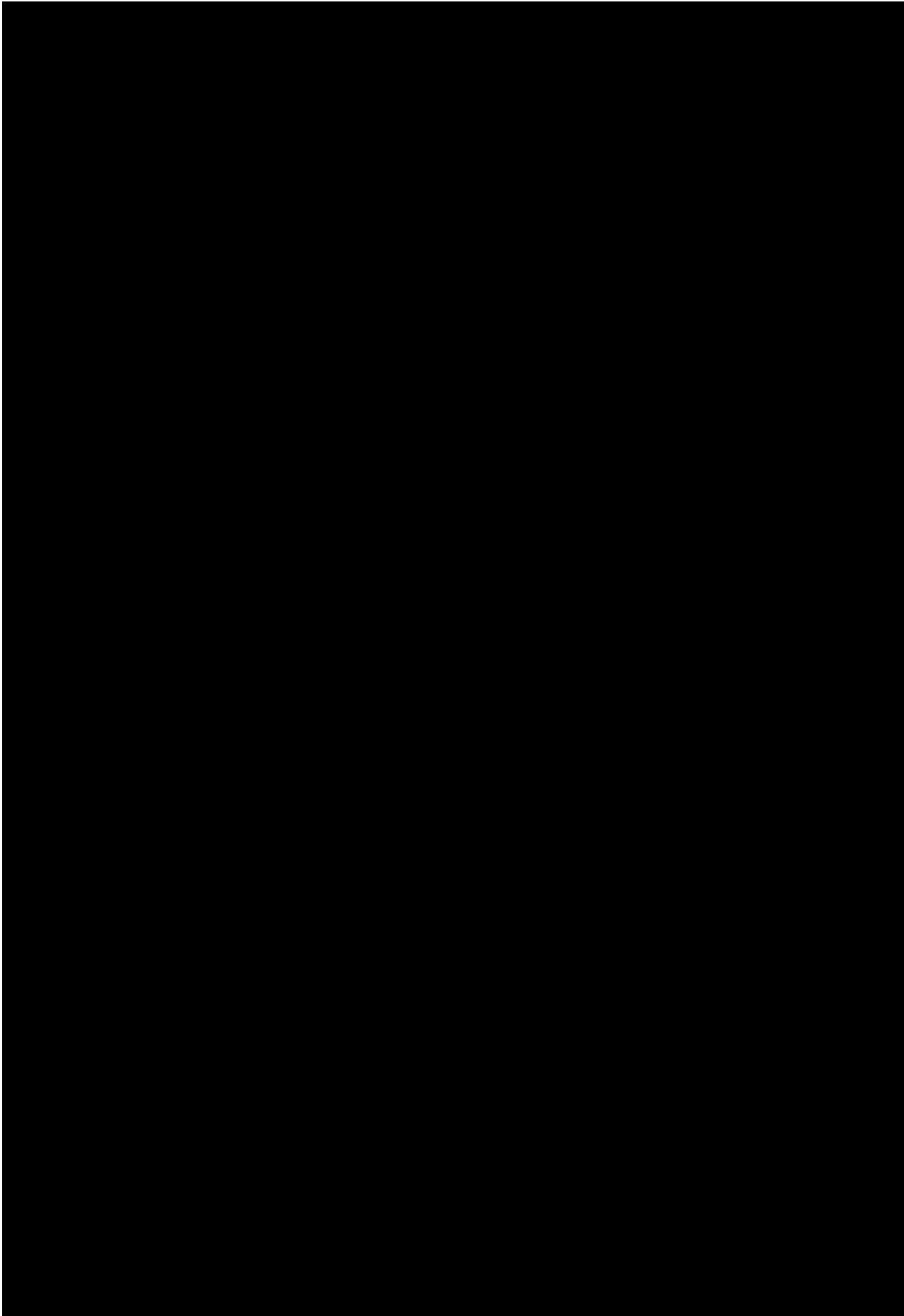
It is reasonable and appropriate to require ONSWC to prepare and present an affiliate agreement with Integra for Commission approval if ONSWC intends to continue receiving support services from Integra.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 12-26 [Outside Accounting Review]

The evidence supporting these findings of fact is contained in the testimony and exhibits of the witnesses for both parties and the entire record in this proceeding.

[BEGIN CONFIDENTIAL]

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[END CONFIDENTIAL]

**EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NO. 27-33
[ONSWC's Current Financial Situation]**

The evidence supporting these findings of fact is contained in the testimony and exhibits of the witnesses for both parties and the entire record in this proceeding.

[BEGIN CONFIDENTIAL]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[END CONFIDENTIAL]

It is also reasonable and appropriate for the Commission to exercise its authority to require Mr. McDonald to provide the financial information the Commission has stated it needs if he continues to refuse to provide that information voluntarily.

**EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NO. 34-36
[Financial Exposure Due to Pending Litigation]**

The evidence supporting these findings of fact is contained in the testimony and exhibits of the witnesses for both parties and the entire record in this proceeding.

[BEGIN CONFIDENTIAL]

[REDACTED]

[REDACTED]

[END CONFIDENTIAL]

It is reasonable and appropriate for this Commission to take whatever measures are available to it to ensure that ONSWC's customers are not negatively impacted by strife between business partners.

**EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NO. 37-39
[Commission Requested Recapitalization Plan]**

The evidence supporting these findings of fact is contained in the testimony and exhibits of the witnesses for both parties and the entire record in this proceeding.

ONSWC has failed to put forth a solution that would resolve the Commission's concerns with its lack of capitalization within a reasonable period of

time. All options that the Public Staff advanced were rejected by the Company in its ONSWC Response to Public Staff Legal Compliance and Recapitalization Report and during the hearing when responding to questions by the Commission.

The Commission questions whether ONSWC seriously investigated its position on the appropriateness of, at least one of, the options proffered by the Public Staff, before dismissing them. This doubt is based upon ONSWC witness McDonald's inability to confirm whether he had taken IRS rules "on when conversion of shareholder or affiliate debt to equity does not lead to income from debt forgiveness" into account when he was exploring ways to recapitalize ONSWC. Tr. vol. 5, 31.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NO. 40-43 [Relationship with the Commission and Compliance with Applicable Laws]

The evidence supporting these findings of fact is contained in the testimony and exhibits of the witnesses for both parties and the entire record in this proceeding.

The Commission agrees with the Public Staff's assertion that ONSWC should have secured Commission approval before entering into the notes with Integra, the Integra Entities, and CNH. ONSWC's failure to secure that approval violates N.C.G.S. §§ 62-153 and 62-161.

Moreover, as should have been obvious from the earlier discussion of affiliate agreements, the Commission does not agree with the Public Staff's narrow reading of "affiliate" set forth in the Public Staff Legal Compliance and

Recapitalization Report. Affiliate and public utility, as defined in N.C.G.S. § 62-2(23), are not congruent. An affiliate of a public utility may also be a public utility, but a person (or entity) can be an affiliate even if the person (or entity) does not fall within the definition of a public utility. The same logic that requires submission of an affiliate agreement setting forth the terms and conditions under which ONSWC will receive support services from Integra applies to the Intercompany Loan Contracts. ONSWC's failure to get those approved also, therefore, violates N.C.G.S. § 62-153.

ONSWC has also run afoul of laws and Commission Rules that require public utilities to provide accurate information. ONSWC has a history of providing the Commission with incorrect information. The inaccurate information regarding ONSWC's ownership that had to be corrected in 28 dockets is an obvious example.

Mr. McDonald has blamed Mr. Myers for many of the Company's past mistakes. It is, however, worth noting that the issues with the 2022 Annual Report that have surfaced in connection with this hearing occurred on Mr. McDonald's watch, which supports an inference that Mr. Myers is not solely to blame.

As the Commission stated during the hearing, ONSWC's lack of action regarding the items the Public Staff identified in the Company's 2022 Annual Report is concerning. ONSWC must be more proactive in its interactions with the Public Staff and the Commission. ONSWC is responsible for ensuring that the information on file with the Commission is accurate at all times. If the Company discovers an error, then it must take remedial measures upon discovery

expeditiously; it cannot simply wait until the next filing is due to correct its error and omissions or wait until errors are detected and brought to its attention.

The foregoing discussion shows that ONSWC, by and through its sole owner Mr. McDonald, has failed to exercise the appropriate care and concern with its filings and dealings with the Commission and has engaged in conduct prohibited under Chapter 62 on multiple occasions. ONSWC's past behavior could be seen as indicative of ONSWC having a blatant disregard for this Commission, its rules, and North Carolina law. Mr. McDonald must ensure that all due diligence required is performed to ensure the company he owns and exclusively manages operates within the confines of applicable law. He must also adequately supervise ONSWC's operations to ensure that it avoids its past noncompliance. This Commission has admonished ONSWC for its past behavior (such as charging customers in service areas for which it did not have a certificate of public convenience and necessity), reminded it that strict adherence to applicable legal authority is expected and required, and ordered it to act accordingly. The Commission is compelled to reiterate the same here. Mr. McDonald as the sole shareholder and President of ONSWC is accountable for knowing and strictly adhering to applicable statutes and Commission Rules so long as he owns and operates ONSWC and ONSWC holds a franchise to provide water or wastewater service in North Carolina.

IT IS, THEREFORE, ORDERED as follows:

1. That John McDonald is declared to be a public utility as defined in N.C.G.S. § 62-3(23);
2. That Integra Water, the Integra Entities, and any other entity under common ownership of Mr. McDonald are determined to be affiliates of ONSWC for purposes of N.C.G.S. §§ 62-153 and 62-160;
3. That Mr. McDonald shall file (confidentially and under seal) a personal Statement of Net Worth and a copy of his 2021 and 2022 federal, state, and local (if applicable) income tax returns within 15 days of the date of this Order;
4. That Mr. McDonald shall file pro-forma financial statements for Integra for the 4th quarter of 2023 and 1st quarter of 2024 within 15 days of the date of this Order;
5. That Mr. McDonald shall continue filing pro-forma financial statements for Integra on a quarterly basis until further order of the Commission;
6. That ONSWC shall prepare and file a cost allocation manual outlining how shared costs will be allocated to ONSWC and Integra, or an Integra entity, within 30 days of the date of this Order;
7. That ONSWC shall file a support services agreement governing transactions between or among ONSWC, Integra, or an Integra entity for

Commission approval in the appropriate subdocket within 30 days of the date of this Order;

8. That ONSWC must comply with North Carolina law with respect to any and all transactions with its affiliates and must seek and obtain prior approval from the Commission or give appropriate notice of such transactions as may be required by N.C.G.S. §§ 62-153, 62-160, 62-161, and 62-167;

9. That ONSWC shall not issue any securities or grant any security interest in its assets without prior approval from the Commission;

10. That the Commission may void or reform the terms of any existing contract with Integra, an Integra entity, or other entity under common ownership with Mr. McDonald that was not properly presented for preapproval under N.C.G.S. § 62-153;

11. That ONSWC shall file confidential updates on the status of the on-going litigation in NC Business Court every 30 days until the litigation concludes;

12. That ONSWC shall notify the Commission of any and all future litigation within 10 days of its commencement;

13. That Mr. McDonald shall take no action to further indebt ONSWC until the on-going litigation in NC Business Court is resolved;

14. That Mr. McDonald shall not call or otherwise foreclose on any existing indebtedness between ONSWC and Integra or an Integra Entity;

15. That ONSWC shall file, in this docket and the subdocket created for the Agreed Upon Procedures Engagement, restated 2022 Financial Statements and an accompanying narrative reconciliation that reflect the errors and inconsistencies identified by the Public Staff and the Commission;

16. That ONWSC shall file an amended 2022 Annual Report and an accompanying narrative reconciliation that is consistent with the financial information in the restated 2022 Financial Statement in this docket and the appropriate M docket;

17. That, in lieu of a forensic or management audit, ONSWC shall commission completion of an Agreed Upon Procedures Engagement consistent with Appendix A by an independent accounting firm within 30 days of the date of this order;

18. That ONSWC shall file the results of the Agreed Upon Procedures Engagement with the Commission in the appropriate subdocket as soon as the report outlining the results of the engagement is complete;

19. That ONSWC shall file quarterly financial statements for ONSWC and Integra within 45 days after the end of each quarter in the subdocket established for the Agreed Upon Procedures Engagement;

20. That the Motion for Asset Transfer is withdrawn from this docket and shall be refiled in a new docket for that specific purpose;

21. That ONSWC shall not file a water or wastewater rate case until the Agreed Upon Procedures Engagement has been completed and the issues identified therein are resolved;

22. That the Chief Clerk’s Office shall establish individual subdockets for (1) the cost allocation manual, (2) affiliate agreements, and (3) Agreed Upon Procedures Engagement; and

23. That the Commission shall retain jurisdiction of this proceeding to the extent necessary to resolve any further issues that may arise as ONSWC complies with the terms and conditions of this Order.

ISSUED BY ORDER OF THE COMMISSION.

This the ___ day of _____, 202_.

NORTH CAROLINA UTILITIES COMMISSION

A. Shonta Dunston, Chief Clerk

Agreed-Upon Procedures Engagement (AUPE)

- I. Scope
 - a. Review ONSWC's books and records to evaluate compliance with GAAP, Uniform System of Accounts (USOA) requirements, and utility accounting principles.
 - b. Examine the books and records related to all line items where the 2022 Financial Statements provided with the Outside Accounting Review and 2022 Annual Report are inconsistent. The level of examination should be commensurate with the magnitude of the discrepancy.
 - c. Review A/P ledger for appropriateness for regulatory accounting
 - d. Review all aspects of plant-in-services (including, but not limited to, in-service dates, depreciation start dates, AFUDC, and CIAC) to evaluate the accuracy of the information and compliance with regulatory requirements
 - i. Sewer: since inception
 - ii. Water: since end of the update period for the water rate case
 - e. Examine the books and records for all entities under common control of Mr. McDonald¹ and document all transactions between all entities. This analysis shall include verifying the amounts of the transactions and tracing all cash flows between the entities.
 - f. Examine and document the way in which allocations from Integra have been calculated and audit accounting records to ensure that process was being followed
 - g. Identify and document internal controls (with particular attention to internal controls related to payables, receivables, and intercompany transactions) and conduct sampling to ensure those internal controls are being followed
 - h. Examine the accounting records for all entities under the common control of John McDonald for the last three years and document all instances of paid-in capital
 - i. Review accounting records for Integra with specific attention to the Due from Affiliates and Long-term Investments line items in the 2022 Financial Statements to ensure there is no double counting. A crosswalk explaining how and why the line items present in the June 2022 Financial Statements were condensed must be prepared.
 - j. Review Integra's books and records related to its debt. This analysis shall include reviewing all loan documents and highlighting terms related to collateral, default, and debt covenants.
 - k. Review the corporate documents of all entities under the common control of Mr. McDonald to determine whether corporate formalities are being followed and separate corporate identities are being maintained

¹ Entities under common of control of Mr. McDonald is synonymous with related parties under ASC 850.

- I. Evaluate and document existing processes in key areas to mitigate any potential negative impact of employee turnover
 - m. Complete a trend analysis of ONSWC's and Integra's financial statements for the last three years
- II. Deliverables
- a. Restated 2022 Financial Statements in the level of detail provided in financial statements produced prior to changes instituted by Joseph Mitchell that resolve errors identified during the hearing and issues identified during the AUPE with a reconciliation that includes numeric and narrative explanations for all differences
 - i. Must reflect issues with the collectability of debts from Chatham North Holdings and ONSWC-Chatham North (in the numbers and any notes)
 - ii. Must reflect the non-accrual of interest on debts due to Integra (in the numbers and any notes)
 - b. Amended 2022 Annual Report using data from the Restated 2022 Financial Statements with a complete reconciliation for every line item that was different from the Original 2022 Annual Report
 - c. Engagement report prepared by the firm that completed the engagement that, at a minimum, includes the information listed in III.a. and b. below.
 - d. Management's plan to resolve any issues identified during the engagement with clear milestones.
- III. Miscellaneous conditions
- a. Must be an assurance engagement where the firm performing the engagement offers an opinion on the following:
 - i. Compliance with GAAP
 - 1. Intercompany transactions
 - 2. Recording of notes given concerns with collectability and the verbal agreement that the notes will not accrue interest
 - ii. Compliance with USOA requirements
 - 1. Properly accounting for all aspects of utility plant-in-service (including, but not limited to, in-service dates, depreciation start dates, AFUDC, and CIAC)
 - iii. Accuracy of the information in ONSWC's YE 2022 Financial Statements and Q3 2023 Financial Statements
 - iv. Accuracy of the information in Integra Water, LLC's YE 2022 Financial Statements and Q3 2023 Financial Statements

- v. Whether corporate formalities are being followed and separate corporate identified are being maintain for all entities under common control if John McDonald
- vi. Whether the assets or liabilities on the financial statements of any entities under common control of John McDonald are distorted because of intercompany transactions
- vii. Integra's ability to continue to fund ONSWC's financial needs on an on-going basis for the next 36 months at a rate of \$1 million per annum without additional paid-in-capital from Mr. McDonald
- b. Additional items the engagement report must discuss:
 - i. Definition of materiality used during the engagement
 - ii. Areas where internal controls and training need to be developed to ensure continuity in the face of employee turnover
 - iii. Information discovered in connection with the review of Integra's short-term and long-term debt including, but not limited to, the creditor, loan amount, maturity date, principal, interest rate, collateral, repayment terms, debt covenants, and payment schedule and history.
 - iv. Results of trend analysis
 - v. Recommendations to address any issues identified during the engagement
- c. Engagement must be performed by an independent firm, that has not previously performed work for Mr. McDonald or any entity over which he has control (whether direct or indirect), with demonstrated competence to render an opinion on compliance with GAAP, USOA requirements, and utility accounting principles.
- d. The Public Staff must be consulted during the selection process and approve the scope of the engagement in advance.

¹¹ Entities under common of control of Mr. McDonald is synonymous with related parties under ASC 850.

CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing Public Staff Brief and Proposed Order to each of the parties of record in this proceeding or their attorneys of record, or both, by emailing them an electronic copy or by causing a paper copy of the same to be hand-delivered or deposited in the United States Mail, postage prepaid, properly addressed to each.

This the 20th day of November, 2023.

Electronically submitted
/s/ Reita D. Coxton