

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. W-1034, SUB 13

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of

Application by Water Resources, Inc., ) PUBLIC STAFF'S PROPOSED  
for Authority to Adjust and Increase ) RECOMMENDED ORDER  
Rates for Water Utility Service in Rocky ) APPROVING PARTIAL RATE  
River Plantation Subdivision in Cabarrus) INCREASE AND REQUIRING  
County and River Walk Subdivision in ) CUSTOMER NOTICE  
Mecklenburg County, North Carolina )

HEARD: Monday, March 25, 2024, at 7:00 p.m. in the Mecklenburg County  
Courthouse, 832 E. 4<sup>th</sup> Street, Charlotte, North Carolina

Monday, May 13, 2024, at 1:00 p.m. in the Commission Hearing  
Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North  
Carolina, 27603

BEFORE: Freda Hilburn, Hearing Examiner

APPEARANCES:

For Water Resources, Inc.:

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

For the Using and Consuming Public:

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

HILBURN, HEARING EXAMINER: On December 29, 2023, Water  
Resources, Inc. (Company or WRI) filed an application with the Commission  
seeking authority to increase its rates for providing water utility service in Rocky  
River Plantation Subdivision (Rocky River) in Cabarrus County and River Walk

Subdivision (River Walk) in Mecklenburg County, North Carolina. On January 3, 2024, the Applicant filed an amended application. On January 22, 2024, the Applicant filed a letter with the Commission stating that the proposed effective date of the rates requested in its amended application should have been 30 days from the filing, which is February 2, 2024, instead of June 1, 2024. The Applicant provides water utility service to approximately 154 residential customers.

The present water utility rates have been in effect since November 21, 2018, pursuant to the Commission's Order in Docket No. W-1034, Sub 8.

By Order dated January 30, 2024, the Commission declared this docket to be a general rate case, suspended the Company's proposed rates.

On March 1, 2024, the Commission issued an Order Scheduling Hearings, Establishing Discovery Guidelines, and Requiring Customer Notice (Scheduling Order), which established the procedural schedule in this proceeding, including filing requirements of the parties.

On March 7, 2024, WRI filed a Certificate of Service, which indicated that service of customer notice had been conducted as required by Commission Order.

On March 14, 2024, WRI filed the direct testimony and exhibits of Dennis Abbott.

On March 25, 2024, the scheduled public witness hearing was held on the date and in the location set out in the Scheduling Order.

Thirteen WRI customers testified at the public witness hearing.

On April 8, 2024, WRI filed its verified Response of Dennis Abbott for Water Resources, Inc. on Customer Testimony.

Subsequent to the filing of WRI's Application in this docket, the Public Staff engaged in substantial discovery of WRI regarding the matters addressed by the Company's Application and further examined the relevant books and records of WRI with respect to its Application. The Public Staff also conducted field inspections of the water systems at Rocky River and River Walk.

The Public Staff filed its direct testimony on April 12, 2024, consisting of the testimony and exhibits of Public Staff witnesses Lynn Feasel, Public Utilities Regulatory Manager of the Water, Sewer, and Telecommunications Sections of the Accounting Division of the Public Staff; the testimony and exhibits of Evan M. Houser, Public Utilities Engineer, Water, Sewer, and Telephone Division of the Public Staff; and the affidavit of Gregory J. Reger, Public Utilities Regulatory Analyst with the Economic Research Division of the Public Staff.

On April 22, 2024, the Public Staff filed its Verified Response to the Company's verified Response of Dennis Abbott for Water Resources, Inc. on Customer Testimony. The Public Staff concluded that WRI's verified report adequately addressed the primary customer concerns expressed at the public

witness hearing; however, WRI's response was based on customer statements rather than all customer concerns expressed at the public witness hearing.

On April 26, 2024, the Public Staff filed the Supplemental Testimony and Exhibits of Lynn Feasel and Evan M. Houser.

On April 29, 2024, WRI filed the joint rebuttal testimony of Dennis Abbott, and Darlene Peedin and Julie Perry, of Peedin and Perry Consulting, LLC.

On May 6, 2024, the Commission issued an Order requiring WRI to file a supplemental verified report on customer concerns not addressed in its initial report.

On May 13, 2024, an expert hearing was held.

On May 28, 2024, the Commission issued a Notice of Due Date for Proposed Orders and/or Briefs setting the due date of filing proposed orders and/or briefs as June 24, 2024.

On May 31, 2024, the Public Staff filed late-filed exhibits of its witnesses Feasel and Houser.

On June 3, 2024, WRI filed its verified supplemental report on customer complaints.

On June 5, 2024, the Public Staff filed a verified response to WRI's supplemental report on customer concerns.

On June 24, 2024, the Public Staff filed its Proposed Order.

WHEREUPON, based upon the entirety of the evidence and the record herein, the Commission now makes the following:

### FINDINGS OF FACT

#### General Matters

1. WRI is a corporation duly organized under the law and is authorized to do business in the State of North Carolina. The Company is subject to the regulatory oversight of this Commission.

2. WRI is properly before the Commission pursuant to N.C. Gen. Stat. § 62 seeking a determination of the justness and reasonableness of its proposed rates and charges for its water utility operations.

3. As of December 31, 2023, WRI served 114 residential water customers in its Rocky River service area in Cabarrus County, and 39 residential water customers in its River Walk service area in Mecklenburg County.

4. The Company's existing and proposed rates are as follows:

	<u>Present Rates</u>	<u>Proposed Rates</u>
<u>Rocky River</u>		
Monthly Metered Water Rates:		
Base charge, zero usage	\$ 11.20	\$ 54.01
Usage charge, per 1,000 gallons	\$ 3.10	\$ 15.04

River Walk

## Monthly Metered Water Rates:

Base charge, zero usage	\$37.50	\$48.69
Usage charge, per 1,000 gallons	\$ 9.07	\$17.50

5. The test period in this proceeding is the 12 months ending December 31, 2022.

**Condition of WRI Water Systems**

6. The Company's water systems, Rocky River in Cabarrus County and River Walk in Mecklenburg County are in fair condition.

7. The Department of Environmental Quality's (DEQ) most recent inspection of the Rocky River system on February 17, 2023, reported multiple water outages when an internet contractor broke pipes during an underground fiber optic line installation.

8. The inspection report recommended that the Company replace a tank lock and clear a path and the storage tank lot of saplings. The Company provided photos to the Public Staff indicating that the tank lot was cleared, and the Company has obtained a new gate lock.

**Customer Concerns and Service**

9. Approximately 50 consumer statements were received and filed in Docket No. W-1034, Sub 13CS.

10. Thirteen witnesses testified at the public witness hearing, most of

whom expressed their concern regarding the magnitude of the proposed rate increase, water outages over the years, poor water quality, poor communication with customers, poor customer service, and inaccurate billing.

11. A petition signed by 121 customers, which expressed the dissatisfaction of customers with regard to WRI's service over the years and called for the replacement of WRI with an emergency operator of the water system, was entered into evidence at the public witness hearing.

12. Pursuant to Commission directive set forth in the Commission's Scheduling Order, WRI filed an initial verified report and a supplemental verified report addressing the customer service and service quality issues expressed by the public witnesses who testified at the customer hearing.

13. The Public Staff filed reports addressing the adequacy of WRI's first and supplemental reports on customer concerns.

14. Based on the records issued by DEQ and customer input, WRI has been providing safe and reliable service to its customers in the River Walk service area.

15. WRI's Customer Contact Logs from the first quarter of 2024 that were filed pursuant to Commission Order in Docket No. W-1034, Sub 8, appear to be generally unrelated to service quality issues, suggesting there had not been significant service issues, particularly in the Rocky River service area, since

December 2023 when the interconnect with the Town of Harrisburg was completed.

16. Since the completion of the interconnection with the Town of Harrisburg and based on the recent performance of the Company, and DEQ reports, WRI is now providing safe and fairly reliable service in the Rocky River system; however, the past issues will need continued monitoring going forward for a period of time.

17. The provision of continuous, safe, adequate, and reliable water utility service is essential to WRI's customers.

18. It is reasonable and appropriate for WRI to: 1) evaluate the effectiveness of the filter in the Rocky River system, which should include taking source and treated water samples, and also investigate the need for interior cleaning of the elevated storage tank within 12 months of the date of this Order; 2) create an opt-in customer email communication to regularly send announcements to customers in each service area of system pressure advisories, outages, or other necessary information in addition to WRI's current door hanger notifications; 3) establish an email communication system within three months of a Commission Order in this docket and further be ordered to report to the Commission and the Public Staff when the communication system is in place; 4) fully implement its website within six months of the date of this order; and 5) continue its three-month reporting of customer contacts, including brief updates on its compliance with the Public Staff recommendations above.



## Issues Not in Dispute

19. Although WRI and the Public Staff were unable to reach agreement on all the issues in dispute and enter into a Settlement and Stipulation Agreement; counsel for the Company and the Public Staff stated on the record at the expert witness hearing that the following issues are not in dispute:

- a. Rate of Return. WRI accepts the Public Staff's position on the appropriate rate of return to be afforded WRI in its Rocky River and River Walk subdivisions.
- b. Maintenance and Repair (M&R)-Public Storage. The Company agrees with the amount of M&R for Public Storage as calculated by the Public Staff.
- c. Miscellaneous revenue. WRI agrees to the miscellaneous revenues as calculated by the Public Staff.
- d. Administrative and office expenses. WRI agrees to the administrative and office expenses as calculated by the Public Staff.
- e. Insurance expense. WRI agrees to the insurance expense as calculated by the Public Staff.
- f. Miscellaneous expense. WRI agrees to the miscellaneous expense as calculated by the Public Staff.

- g. Amortization expense of Contributions in Aid of Construction (CIAC). WRI agrees to the amortization expense of CIAC as calculated by the Public Staff.
- h. Test Year Water Usage. The Company agrees to the Public Staff's adjustments to test year water usage.

### **Decommissioning of Well #1 and Interconnection with Town of Harrisburg**

20. The water system serving WRI's Rocky River subdivision was designed and constructed with two wells, Wells 1 and 2. Two wells are necessary in case one must be taken down or is inoperable. Well #1 situated in the Rocky River service area was taken offline on June 30, 2019, due to repeated exceedances of the combined radium maximum contaminant level (MCL).

21. WRI first became aware of the elevated radium levels in Well # 1 in December of 2018.

22. North Carolina Administrative Code, Title 15A, Subchapter 18C, Rule .0402(g)(5) [15A NCAC 18C.0402(g)(5)] requires that a residential community water system using well water as its source of supply and designated to serve 50 or more connections, must provide at least two wells. If a second well cannot be provided, another approved water supply source may be accepted.

23. At the time that Well #1 was taken out of service, WRI was aware that the system was required to operate two wells, because its system served more than 50 customers.

24. WRI informed DEQ on August 12, 2019, that it intended to interconnect with the Town of Harrisburg to obtain a second approved water supply source for the Rocky River system.

25. DEQ formally approved WRI's request to inactivate Well #1 in September of 2019, and notified WRI that a Notice of Violation (NOV) would be forthcoming for failure to have at least two wells or another approved water supply source.

26. On September 21, 2020, nine days before the September 30, 2020 deadline, WRI notified DEQ that the new connection could not be constructed due to WRI's inability to obtain an easement from one of the property owners.

27. The interconnection with the Town of Harrisburg was completed and in service on or about December 2023 and WRI informed DEQ that the interconnection was completed and in service in December 2023.

28. The primary driver of the Company's rate case application is to recover the costs incurred by WRI to complete the interconnection with the Town of Harrisburg, as well as to make system improvements such as replacing aging water meters.

29. WRI's interconnection with the Town of Harrisburg was necessary to remedy the non-compliance and required by DEQ to maintain the provision of adequate water service and ensure safe drinking water in the Rocky River service area.

30. The Company seeks to recover in the herein rate case costs related to the interconnection project, including (1) legal fees; (2) permitting with the Town of Harrisburg and DEQ; (3) acquiring an easement; (4) design and construction; (5) evaluation of alternative options; (5) surveying; and (6) landscaping. The legal fees included work for potential condemnation of easement land, DEQ Compliance reporting, correspondence and weekly reporting to the Attorney General's Office (AGO), and filings with the Commission.

### **WRI's History of Noncompliance**

31. WRI has a long history of failing to timely respond to Commission Orders, and to requests of DEQ and the NC Department of Justice (DOJ).

32. WRI incurred a fine from the Commission for its willful failure to respond to Commission order in a complaint filed in Docket No. W-1034 Sub 10.

33. The Company's unreasonable delay in completing the interconnection with the Town of Harrisburg was the basis for the NOVs, Motions to Show Cause, and Consent Judgments, which were issued against the Company by DEQ and the NC Attorney General's office on behalf of DEQ.

34. On December 17, 2018, April 15, 2019, and June 13, 2019, DEQ issued NOVs to WRI for violation of the combined radium standard in its Well #1.

35. On February 3, 2021, Public Water Supply section of DEQ assessed an Administrative Penalty against WRI in the amount of \$4,500. As of the date of the penalty, the system had not returned to compliance.

36. On June 17, 2021, the AGO filed on behalf of DEQ a Complaint and Motion for Injunctive Relief against WRI for its continued violation.

37. On July 15, 2021, DEQ and WRI entered into a Consent Judgment in order to resolve WRI's non-compliance with state drinking water requirements after taking one of its two wells (Well #1) out of service and failing to provide another source of drinking water within a reasonable period of time.

38. The terms of the Consent Judgment also required WRI to complete construction of the interconnection to the Town of Harrisburg's drinking water system by September 9, 2022. Construction had not begun as of September 9, 2022.

39. On September 12, 2022, DEQ filed a Motion for Entry of Order to Show Cause (Show Cause Motion), and on November 7, 2022, the Cabarrus County Superior Court issued an Order directing WRI to appear and show cause why it should not be held in contempt because of its failure to abide by the terms of the Consent Judgment and complete the interconnection with the Town of Harrisburg as ordered.

40. On November 8, 2022, DEQ and WRI entered into an Amended Consent Judgment, which required WRI, among other things, to provide weekly reports detailing its efforts and progress regarding completing the interconnect with the Town of Harrisburg.

41. On September 29, 2022, the Public Staff filed a motion for WRI's bond to be increased by the Commission as a result of the Company's unreasonable actions and failure to respond to DEQ and DOJ actions.

42. On January 18, 2024, following the interconnection with the Town of Harrisburg, DEQ sent a letter to WRI stating that the administrative penalty amounting to \$4,500 had been rescinded following DEQ's review of the actions taken by WRI.

#### **Adjustments Plant in Service Related to Town of Harrisburg Interconnection**

43. A service life of 50 years for the Harrisburg interconnection project as recommended by the Public Staff is more representative of the expected life of the assets, primarily pipe and encasement.

44. The Public Staff made adjustments to remove (1) unsupported legal fees from 2021; (2) all legal fees related to preparing for hearing, consulting with WRI and other parties, and representing WRI in contempt and other proceedings relating to WRI's failure to comply with the Consent Judgment entered into between WRI and DEQ on July 15, 2021; and (3) half of all legal invoices related

to the Consent Judgement and Amended Consent Judgment dated November 8, 2022, issued by the Court .

45. Legal fees related to the Consent Judgment were incurred unreasonably due to a prolonged period of noncompliance when Well #1 was taken offline for an extended period.

46. Ratepayers were vulnerable to harm due to the prolonged non-compliance of WRI, notwithstanding that Well #2 was in operation and as storage was available.

47. It is not fair or appropriate for ratepayers to bear any legal costs incurred by WRI that were related to defending proceedings relating to show cause proceedings related to WRI's failure to timely complete the Harrisburg connection.

48. It is not fair or appropriate to burden WRI's customers with rates that include costs attributable to WRI's imprudence in unreasonably delaying taking action to comply with DEQ's NOVs and Environmental Protection Agency (EPA) rules and regulations and keep customers safe from possible harm.

49. It is not appropriate for ratepayers to bear the total amount of professional fees incurred by WRI as a result of meeting filing requirements pursuant to the Commission's orders and the DOJ's Consent Judgment between DEQ and WRI.

50. It is appropriate to remove legal fees associated with the proceeding to increase WRI's bond, which was filed by the Public Staff due to WRI's non-compliance, from recovery. WRI failed to remedy the service violations in a timely manner.

51. It is reasonable to allow WRI to recover one half of its legal fees related to reporting to the Cabarrus County Superior Court, the Commission, and DEQ on the progress of the interconnect with the Town of Harrisburg as recommended by the Public Staff.

52. There is a North Carolina legal precedent for the principle that legal expenses incurred by a water utility in defense of a penalty proceeding must be excluded from rate recovery as a matter of law.

53. WRI was required to pay a one-time development fee to the Town of Harrisburg in order to connect to its system. The development fee allows the Company perpetual access to purchase water from the Town of Harrisburg and should be deemed non-depreciable.

54. The adjustments made by the Public Staff are reasonable and appropriate and the WRI is only entitled to recover interconnection project costs in the amount of \$310,176.



### **Well #1 & 2 Adjustments**

55. Well #1 in the Rocky River service area was taken offline on June 30, 2019, and is not used and useful; therefore, all costs associated with WRI's Well # 1 should not be recovered from Rocky River's customers.

56. It is reasonable and appropriate to remove all 2022 capitalized pump repair costs from recovery.

### **Disputed Operating and Maintenance Expenses**

57. It is appropriate to adjust the water testing expense from \$3,433 to \$1,657 for Rocky River and from \$914 to \$1,657 for River Walk.

58. It is appropriate to adjust the electric power expense from \$6,938 to \$6,211 for Rocky River and from \$3,451 to \$3,046 for River Walk.

59. It is appropriate to adjust the chemicals expense from \$3,516 to \$3,744 for Rocky River and from \$1,192 to \$936 for River Walk.

60. It is appropriate to adjust the purchased water expense, including the sewer service charges, from \$1,245 to \$1,259 for Rocky River. The Public Staff's adjustments to the Company's water testing expense, electric power expense, chemicals expense are just and reasonable.

### **Salaries Expense**

61. WRI did not provide adequate support for the salary of its on-site employee and should recover the O&M expenses related to this employee based on the amount recommended by the Public Staff, which is reasonable.

### **Web Design Expenses**

62. WRI did not provide adequate support for its web design expenses and it is appropriate to disallow them.

### **Professional Fees**

63. The Public Staff's adjustments to Professional Fees reflect a reasonable and appropriate ongoing level of fees that are supported by the Company's schedules.

### **Regulatory Expense**

64. WRI is entitled to recover legal fees up until the close of the evidentiary hearing in accordance with N.C. Gen. Stat 62-133(c).

65. It is reasonable and appropriate to amortize rate case expense over a period of five years.

66. It is reasonable and appropriate for WRI to establish a regulatory liability account for any over recovery of rate case expense if it fails to file an application for a rate increase after five years.

## Rate Base

67. The original cost rate base for use in this proceeding for Rocky River is \$433,515, consisting of plant in service of \$521,601, plus cash working capital of \$,11,185, less accumulated depreciation of \$,85,258, CIAC of \$13,295, and average tax accruals of \$719.

68. The original cost rate base for use in this proceeding for River Walk is \$24,277, consisting of plant in service of \$53,224, plus cash working capital of \$3,921 and customer advances of \$876, less accumulated depreciation of \$27,401, CIAC of \$6,165, and average tax accruals of \$178.

## Operating Revenues

69. The appropriate level of total revenues for consideration in this proceeding for Rocky River is \$43,700 under the Company's present rates and \$208,232 under the proposed rates.

70. The appropriate level of total revenues for consideration in this proceeding for River Walk is \$35,654 under the Company's present rates and \$57,354 under the proposed rates.

71. The appropriate level of operating revenue deductions for Rocky River under present rates for use in this proceeding is \$108,529. Operating revenue deductions exclusive of regulatory fee and income taxes amount to \$101,989.

72. The appropriate level of operating revenue deductions for River Walk under present rates for use in this proceeding is \$36,592. Operating revenue deductions exclusive of regulatory fee and income taxes amount to \$35,787.

### **Revenue Requirement**

73. It is reasonable and appropriate to grant WRI a 7.00% return on rate base for water utility service in the Rocky River service area.

74. The recommended overall rate of return is based on a cost rate for long-term debt of 4.20%, and a cost rate for common equity of 9.80%. The overall rate of return is to be used in conjunction with a reasonable capital structure consisting of 50% debt and 50% equity.

75. It is reasonable and appropriate to determine the revenue requirement for water utility service in the River Walk service area using the operating ratio methodology as allowed by N.C. Gen. Stat. § 62-133.1.

76. It is reasonable and appropriate to grant WRI a 7.00% margin on expenses for water utility service in the River Walk service area.

77. The appropriate revenue requirement in this proceeding for Rocky River is \$138,875 as calculated by the Public Staff.

78. The appropriate revenue requirement in this proceeding for River Walk is \$39,097 as calculated by the Public Staff.

## Rate Design

79. WRI proposes a 40:60 (base facility charge: usage charge) rate design for both service areas. The current rate design, calculated based on adjusted test year usage at the Public Staff's Billing Determinants, is 41:59 in Rocky River and 50:50 in River Walk.

80. It is reasonable and appropriate to use a service revenue ratio of 30:70 as recommended by the Public Staff.

81. The McMillan Acres interconnect base charge should be assigned a 17 Residential Equivalent Units (REU) multiplier as recommended by the Public Staff.

## Rates

82. Using a service revenue ratio of 30:70, the following rates will produce the annual level of revenues approved herein for water operations at Rocky River and River Walk:

### Rocky River

Base Charge, zero usage:

Residential	\$ 26.32
Bulk (McMillan Acres)	\$ 447.44
Usage Charge, per 1,000 gallons	\$ 11.87

River WalkBase Charge, zero usage:

Residential \$ 24.79

Usage Charge, per 1,000 gallons \$ 13.88

83. The rates determined by the Public Staff result in an increase of 215% bill increase for a customer in the Rocky River subdivision and a 10.5% bill increase for a customer in the River Walk subdivision.

84. The rates that result from the appropriate revenue requirement determined for the Rocky River subdivision create “rate shock” for the customers in this service area.

85. As well as considering all the items enumerated in N.C. Gen. Stat. § 62-133(b) in fixing rates, the Commission must also consider all other material facts of record that will enable it to determine just and reasonable rates pursuant to N.C. Gen. Stat. § 62-133(d). The Commission specifically has taken into account the following material facts of record:

- a. The Company's record of non-compliance with DEQ requirements since the last rate case;
- b. History of poor service;
- c. History of poor communications with customers; and
- d. The magnitude of the rate increase and the rate shock that would occur should the entire increase be imposed at one time.

## **EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 – 5**

### **General Matters**

The evidence supporting these findings is contained in WRI's Application and the testimony and exhibits of WRI witness Dennis Abbott. These findings of fact are essentially informational, procedural, and jurisdictional in nature, and the matters that they involve are not contested by any party.

## **EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 6-8**

### **Condition of WRI Water Systems**

The evidence supporting these findings of fact is contained in the testimonies of Public Staff witness Evan Houser and Company witness Abbott.

Public Staff witness Houser stated in his testimony that he conducted a site visit on March 21, 2024, and inspected the WRI water systems. He further stated that he was accompanied by Mr. Abbott, President of WRI, and Mr. Raymond Whitner from DEQ's Public Water Supply Section (PWS), a section within the Division of Water Resources (DWR). Tr. vol. 2, 92.

Witness Houser stated that the water systems appeared to be in fair condition; however, he noted the following issues in the Rocky River service area: the elevated storage tank appeared to have some visible corrosion, as well as some discoloration on the underside of the tank bowl; the gate was unlocked, and

the fence, which surrounds the elevated storage tank, was damaged in one corner, allowing access to the storage tank. *Id.*

After witness Houser's inspection of the River Walk system, he noted that: the system's well enclosure was damaged, compromising the structure, but the well components inside the structure did not appear to be damaged. *Id.* He stated that Mr. Abbott suspected that a vehicle moving tree debris had struck the enclosure, which appeared to be reasonable based on the damage observed. *Id.*

Witness Houser also discussed the results of American Tank Maintenance's (ATM) visual inspection of the Company's 100,000-gallon elevated storage tank on February 10, 2020. Although ATM noted corrosion forming on the tank legs, bowl, and roof, it reported that the tank was structurally sound and that no defects were noted.

Public Staff witness Houser described the most recent DEQ inspection of Rocky River on February 17, 2023. According to Mr. Houser, the DEQ inspection report noted that "the water system had recently been 'plagued' by multiple water outages when an internet contractor broke pipes during an underground fiber optic line installation." DEQ's inspection report also noted that the elevated tank lot was not locked, and that the lot was overgrown with saplings. The report stated that no water was observed running down the street from the meter boxes with the exception of one home next to the Well #2 access. The inspection noted that regarding whether WRI had followed the recommendations from DEQ's previous report, the leaking Well #2 meter and the Well #2 cover had been replaced, but



the tank gate had not been locked. The inspection report recommended that the Company clear a path and the storage tank lot of saplings. Witness Houser stated that, although the saplings had not been cleared at the time of his March 2024 site visit, Mr. Abbott subsequently provided him photos of the cleared tank lot and new gate lock on April 5, 2024.

Public Staff witness stated that DEQ most recently inspected the River Walk system on March 1, 2022. The inspection report noted that both booster pumps had been replaced and made several recommendations. DEQ recommended (1) modifying the roof over Well #2 to allow the operator in responsible charge (ORC) to lift it by themselves; (2) cleaning and painting of the ground and hydropneumatic storage tanks; (3) screening or providing a solid weather resistant cover for the holes in the doors, or replacing the doors for the Well #1 and treatment plant rooms to prevent animal or vermin infiltration; (4) removing trash, debris, and unused equipment from the wellhouse and treatment plant rooms; (5) replacing the broken meter on Well #1; and (6) replacing or repairing the injection parts to stop leaking at the chemical injection site. At the time of Mr. Houser's site visit, the roof had not been modified, the holes in the doors had not been covered, there were some old components and debris present in the treatment building, and there appeared to be some fluid leaking in the room that contained the chemical injection point. Each of the tanks has recently been painted. *Id.*

Witness Houser stated that Mr. Abbott notified him of his intention to replace the Well #2 well structure with a fiber glass cover to allow the ORC easy access and resolve the damage to the structure.

## **EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 9-14**

### **Customer Concerns**

The evidence supporting these findings of fact is found in the testimony of WRI witness Abbott, in the transcript of the customer hearing held in this docket on March 25, 2024, in the verified Report filed on April 8, 2024, and Supplemental verified report filed on June 3, 2024, by WRI in response to the customers' service-related concerns (collectively referred to as "Reports on Customer Concerns" or "Reports"), the testimony at the public witness hearing held, the testimony of Company witness Abbott and Public Staff witness Houser, and the testimony of Company witness Abbott and Public Staff witness Houser at the evidentiary hearing.

WRI witness, Dennis Abbott, testified that pursuant to decretal paragraph 4 of the Commission's July 29 Order, WRI was required to file on or before January 30, 2023, a report on its efforts to create a website, form a customer advisory group, or otherwise institute means to obtain customer feedback and improve communications between WRI and its customers, specifically including notice of flushing activities.

Witness Abbott testified that it filed its report on January 30, 2023 and reported that instead of establishing a customer advisory group, it found that its

existing communications channels accomplished the function of a customer advisory group by providing a means to poll the members of the representative customer groups regarding their experiences with water pressure, water quality, and other issues related to WRI's operations. *Id.* at 22.

With respect to River Walk, the Company reported that communications with the Homeowners' Association (HOA) leadership provides a representative group of customers that are presumably selected by other members of the HOA through a democratic process built into the HOA governance structure. With respect to Rocky River, the Company reported that it proactively contacts this group of customers to gain insight into its experience and those of its neighbors, and any concerns brought to the Company's attention are addressed and the Company follow up with the homeowners is provided. *Id.*

Witness Abbott further reported that the Company continues to file quarterly customer contact logs with the Commission in Docket No. W-1034, Sub 8. He also stated that the customer contact logs indicate improvement in customer service and an increasing level of satisfaction with the WRI's responsiveness and resolution of concerns. Mr. Abbott also noted that WRI filed its last report on January 17, 2024. Tr. vol. 2, 22-23.

When asked to describe customer reaction and communication regarding service provided during the test period, Mr. Abbot testified, "[f]or the most part, the Company records do not indicate a substantial number of complaints." *Id.* at 24.

Notwithstanding Mr. Abbott's testimony, customer testimony indicated otherwise, as does Mr. Abbott's own testimony during the evidentiary hearing. First, in the joint rebuttal testimony of Mr. Abbot and consultants, Peedin and Perry, LLC (Peedin and Perry), WRI expressly states that the website will be in effect in "May 2024" before the close of the evidentiary hearing. Mr. Abbott confirmed at the evidentiary hearing that the website is still not active.

Numerous customers at the public witness hearing testified to their dissatisfaction with the Company's customer service, including customer witness Davis who stated, "[r]ecently, their answering system is better, and they do call you back and the outages are less. But given the long history of frustration, that clouds that. You don't have any confidence. So, they've been a little better but it's still very frustrating." Tr. vol. 1, 34-35.

#### **EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 14- 18**

The evidence for these findings of fact is in the customer testimony, as well as the testimony of Public Staff witness Houser, the prefiled direct testimony of witness Abbott, and Mr. Abbott's testimony during the evidentiary hearing.

Public Staff witness Houser stated in his prefiled testimony that in his opinion, based on the records issued by DEQ and customer input, WRI has been providing safe and reliable service to its customers in the River Walk service area.

WRI's Customer Contact Logs from the first quarter of 2024 that were filed pursuant to Commission Order in Docket No. W-1034, Sub 8 (Sub 8) appear to

be generally unrelated to service quality issues, suggesting there had not been significant service issues, particularly in the Rocky River service area, since December 2023 when the interconnect with the Town of Harrisburg was completed.

One customer at the public witness hearing stated that there was a lack of response from WRI when Customers called to report issues and that WRI would never call back or address the issue with any urgency. *Id.* at 14.

Customer testimony varied but some customers noted that customer service quality has improved somewhat. As discussed by customer witness Davis and quoted above, a long history of frustration appears to have eroded customer trust, which is not built easily.

Customer testimony regarding water quality and sediment was consistent from customer to customer with general sentiment that customers experienced discolored or muddy water on a somewhat regular basis.

The Highland Ridge Homeowner's Association statement filed as Stremovihtg Exhibit 2 outlined significant customer concerns with regular and ongoing issues related to water quality, water outages, water pressure, main breaks, mismanaged billing, and customer communications. The statement states that residents have endured inconsistent quality of service, inconsistent pressure, regular issues of water outages, and issues of inconsistent and overbilling, among others. The statement outlined customer requests to improve customer service

by providing online billing and payment processing instead of requiring antiquated mail in billing, requiring updates to WRI's service line maps every ten years, making service line maps available to NC811 and WRI employees and contractors, reducing service line hits to the company's underground facilities, and reducing unaccounted for water. *Id.* at 27.

Public Staff witness Houser made recommendations that the Company 1) evaluate the effectiveness of the filter in the Rocky River system, which should include taking source and treated water samples, and also investigate the need for interior cleaning of the elevated storage tank within 12 months of the date of this order; 2) create an opt-in customer email communication to regularly send announcements to customers in each service area to notify customers of system pressure advisories, outages, or other necessary information in addition to WRI's current door hanger notifications; 3) establish an email communication system within three months of a Commission order in this docket and further be ordered to report to the Commission and the Public Staff when the communication system is in place; 4) fully implement its website within six months of the date of this order; and 5) continue its three-month reporting of customer contacts, including brief updates on its compliance with the Public Staff recommendations above. Witness Houser further recommended that once the Company had complied with each of the recommendations, the reporting period could be extended to require only bi-annual or annual reporting. *Tr.* vol. 2,105-07.

Dennis Abbott testified at the expert witness hearing that the website was not yet accessible to the public, and that the website was in the final testing phases. Mr. Abbott stated that the Company was confident that the website would be rolled out in June if no other issues were found, and that it should have no problem meeting a six-month deadline. Tr. vol. 3,154-55.

In response to the Hearing Examiner, witness Abbott stated that depending on what Public Staff Witness Houser considers evaluation of the filter, the Company would be fine with evaluation of the filter and inspection of the elevated storage tank for cleaning as recommended by the Public Staff. Mr. Abbott went on to state regarding the opt-in customer email communication, that as part of the website rollout, customers will have to register and provide their email addresses. Tr. vol. 3, 156-58.

### **Discussion and Conclusions**

Since the completion of the interconnection with the Town of Harrisburg and based on the recent performance of the Company, and DEQ reports, the Hearing Examiner believes WRI is now providing safe and fairly reliable service in the Rocky River system; however, the past issues will need to continue to be monitored going forward for a period of time. The provision of continuous, safe, adequate, and reliable water utility service is essential to WRI's customers and WRI needs to ensure this going forward.

The Hearing Examiner finds and concludes that WRI's service to customers has improved since the completion of the interconnection with the Town of Harrisburg. However, WRI through its persistent failures in the past to engender a supportive and communicative relationship with its customers has customers wary of whether the Company will continue, after this rate case is closed, without once again having to be ordered to comply by the Commission, DEQ, or another court order. Provision of continuous, safe, adequate, and reliable water utility service is essential to WRI's customers. Therefore, the Hearing Examiner concludes that WRI's attention to customer service should continue to be monitored going forward for a period of time to be determined based on the number of customer complaints the Company, Public Staff or Commission receives until the Company's next rate case.

Additionally, the Hearing Examiner finds and concludes that the Public Staff's recommendations as a result of its inspection of WRI's water systems are just and reasonable and should be approved. Therefore, in accordance with the recommendations of the Public Staff, WRI shall be required to: 1) evaluate the effectiveness of the filter in the Rocky River system, which should include taking source and treated water samples, and also investigate the need for interior cleaning of the elevated storage tank within 12-months of a Commission order in this docket; 2) create an opt-in customer email communication to regularly send announcements to customers in each service area to notify customers of system pressure advisories, outages, or other necessary information in addition to WRI's current door hanger notifications; 3) establish an email communication system



within three months of a Commission order in this docket and further be ordered to report to the Commission and the Public Staff when the communication system is in place; 4) fully implement its website within six months of the date of this Order; and 5) continue its three-month reporting of customer contacts, including brief updates on its compliance with the Public Staff recommendations above.

## **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 19**

### **Issues Not in Dispute**

This finding is based on the application and exhibits filed by WRI, the prefiled testimony and exhibits of Public Staff witnesses Feasel and Houser, and the statement of agreement made by counsel for the Public Staff and the Company, which was read into the record at the expert witness hearing.

At the beginning of the expert witness hearing, counsel for the Public Staff stated that although the Company and the Public Staff were unable to reach a complete settlement of all issues in dispute; there were issues that the parties agreed were not in dispute. The Company agreed to the following adjustments of the Public Staff:

1. Maintenance and Repair: WRI agrees with the amount of maintenance and repair for public storage as calculated by Public Staff Witness Evan Houser.

2. Miscellaneous Revenue: the Company agrees to the miscellaneous revenues as calculated by the Public Staff witness Feasel.

3. Administrative and Office Expense: The Company agrees to the administrative and office expense as calculated by Public Staff witness Feasel.

4. Insurance Expense: The Company agrees to the insurance expense as calculated by Public Staff witness Feasel.

5. Miscellaneous Expense, the Company agrees to the miscellaneous expense as calculated by Public Staff witness Feasel.

6. The Company agrees to the amortization expense of CIAC as calculated by Public Staff witness Feasel.

7. the Company agrees to Public Staff's adjustment to test year water usage.

Tr. vol. 2, 10-12.

### **Discussion and Conclusion**

After the review of the Company's application and exhibits, and the testimony and schedules of the Public Staff, the Hearing Examiner finds and

concludes that issues to which the parties agreed are reasonable and appropriate and should be approved.

## **EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 20-30**

### **Decommissioning of Well#1 and Interconnection with Town of Harrisburg**

The evidence for these findings of fact is based on the Company's Application, the prefiled testimony and testimony during the evidentiary hearing of Company witness Abbott, the joint testimony of witness Abbott and Peedin and Perry, and the testimony of Public Staff witnesses Feasel and Houser. These findings are informational in nature and are not contested by any party.

### **Discussion and Conclusion**

The Hearing Examiner finds and concludes that the uncontested facts established in the testimony of the Company witnesses and the Public Staff witnesses are: (1) that the water system serving WRI's Rocky River subdivision initially had two wells, Wells 1 and 2.; (2) two wells are necessary in case one must be taken down or is inoperable; and (3) Well #1 situated in the Rocky River service area was taken offline on June 30, 2019. due to repeated exceedances of the combined radium MCL.

## EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 31-42

### WRI's History of Noncompliance and Regulatory Actions

The evidence for these findings is found in the testimony and exhibits of WRI, the testimony of Public Staff witness Houser, Commission records, records and orders of the Cabarrus County Superior Court, and the testimony of Company witness Abbott.

The Hearing Examiner takes judicial notice of the filings made with the Commission and orders issued by the Commission in Docket Nos. W-1034, Subs 8, 9, and 10 in determining that WRI has a significant history of failing to adhere to the Commission's rules and orders as well as to the requirements of the DEQ and its sections, which has resulted in the unreasonable delays in responding to customer complaints and concerns and failing to take actions to protect the interests of its customers. WRI's history of unreasonable delays has resulted in the Company incurring fines, penalties or the threat of penalties, significant reporting requirements, and stringent compliance deadlines.

#### I. Failure to Comply with Commission Orders and Directives

The Hearing Examiner takes judicial notice of the following procedural history of matters relating to WRI.

1. In 2018, WRI filed an application with the Commission in Sub 8 requesting authority to increase its rates for water utility service in the Rocky River Subdivision. During its investigation, the Public Staff noted

deficiencies in WRI's operation of the water system at the Rocky River Subdivision. Public Staff witness David Furr, then the Director of the Public Staff Water, Sewer, and Telephone Division, noted several deficiencies in his pre-filed direct testimony.

2. The Hearing Examiner, in its November 21, 2018, Recommended Order Approving Agreed Upon Rates and Requiring Customer Notice in the Sub 8 Docket, directed WRI to correct the deficiencies noted in Public Staff witness Furr's testimony within 90 days.
3. On April 4, 2019, the Public Staff sent a letter to WRI regarding its failure to comply with the Commission's November 21, 2018 Order, because the Company had not addressed the deficiencies listed in Findings of Fact Nos. 7-11. Sub 8, Public Staff Letter to Water Resources, Inc., Re: Rate Order, April 4, 2019.
4. The Public Staff again sent a letter to WRI on August 8, 2019, regarding the deficiencies in complying with Findings of Fact Nos. 7-11. This letter again noted that WRI had not complied with the Commission's November 21, 2018 Order. Sub 8, Public Staff Letter to Water Resources, Inc., August 8, 2019.
5. On August 30, 2019, WRI filed a letter providing the status of its efforts to resolve the deficiencies identified in the November 21, 2018, Order. Some deficiencies were corrected, but numerous deficiencies

remained uncorrected. Sub 8, Status of Deficiency Corrections Noted in the Recommended Order Approving Agreed Upon Rates, August 30, 2019.

6. On February 1, 2021, in Docket No. W-1034, Sub 9, (Sub 9) Mr. Eric M. Olsen filed a formal complaint (Olsen Complaint) against WRI. This complaint concerned a water leak around Mr. Olsen's meter box. After numerous attempts were made by WRI to fix the leak, the leak was finally repaired four months later on June 11, 2021. On February 2, 2021, the Commission issued an Order Serving Complaint and required WRI to either satisfy the demands of complainant Olsen or file an answer with the Commission no later than February 12, 2021. WRI failed to respond to the Commission's Order, and on April 29, 2021, the Commission issued an Order Scheduling Show Cause Hearing requiring a representative of WRI to appear and show cause why it should not be found to have willfully failed to respond to a Commission order and why it should not be subject to sanctions as provided by statute including monetary penalties. A hearing was scheduled for and held on June 3, 2021, via Webex. WRI was represented by counsel and presented the testimony of Dennis Abbott. In his testimony, Mr. Abbott acknowledged that WRI had fallen short of meeting the Commission's reasonable expectations for how a water utility should be run, admitted that the Company had failed to keep current its contact information, and stated that he was making changes to improve customer service and responsiveness to the Commission. Sub 9 Show

Cause Hearing, Tr., 10-13. Specifically with regard to his failure to file an answer in response to the Commission's Sub 9 Show Cause Order, witness Abbott acknowledged that he knew that he was under an obligation "to respond to the Utilities Commission," but he believed that his email to the Public Staff updating the Public Staff on the status of the Olsen Complaint was sufficient and that the Public Staff was then updating the Commission. Sub 9 Show Cause Hearing, Tr., 10-11, 16-18. In response to questions by the Commission, witness Abbott further stated that the need to formally respond to the Commission "all became aware to me last week." Sub 9 Show Cause Hearing, Tr. at 22.

7. By Order dated August 13, 2021, the Commission imposed a fine of \$2,500 against WRI for its failure to comply with the Commission's February 2, 2021 Order Serving Complaint. In its findings the Commission stated, "[t]he Commission finds that Water Resources' failure to comply with the Commission's February 2, 2021 Order Serving Complaint and to file the required answer to the complaint indicates a lack of respect or at least indifference to the Commission and its authority. The Commission recognizes witness Abbott's admitted failures and promised actions to improve future responsiveness to the Commission and to its customers; however, in light of the Company's and witness Abbott's long history with the Commission, the Commission finds unpersuasive his excuses for willfully failing to comply with the Commission's February 2, 2021 Order Serving Complaint." Sub 9 Show Cause Order, 3.

The Commission further stated, “Additionally, a utility is responsible for managing its relationship with its customers, and witness Abbott admitted the Company’s failure regarding responsiveness to its customers. Specifically, Water Resources has failed to manage appropriately the current situation with its customers in Complainant’s neighborhood. The Commission is persuaded that the Company’s lack of responsiveness in this case has exacerbated the situation, resulting in increased frustration and anger being expressed to the Commission by Complainant and his neighbors. The Commission notes that the issues raised by Complainant have been ongoing for more than a year and a half, and the Company has not demonstrated an ability to manage this situation appropriately, even after receiving the Commission’s orders in this case.” *Id.*

Mr. Olsen’s Complaint was dismissed by the Commission on July 15, 2022, after the requested repairs were finally completed. In dismissing the Olsen Complaint, the Commission recognized that “WRI needs to make improvements in its customer service and utility operations, and the Commission will require WRI to continue to meet Commission-ordered directives.” Sub 9, Order Dismissing Complaint, July 15, 2022, 24.

8. On June 25, 2021, another complaint was filed in Docket No. W-1034, Sub 10, by Mr. Lenny Devitto (Devitto Complaint) who also testified at the public witness hearing in the herein docket on March 25.



The Devitto Complaint alleged that WRI failed to comply with the Company's Sub 8 Rate Case Order by not replacing the antiquated water meters and failed to comply with a DEQ requirement to repair one of the two wells serving Rocky River or to connect to the Town of Harrisburg water system.

9. On September 29, 2022, the Public Staff filed in Sub 8 the Public Staff's Motion To Raise The Amount Of Bond Of Water Resources, Inc. (Bond Motion) requesting the Commission to order WRI to post an additional bond in the amount of \$200,000 to be allocated to water utility service in the Rocky River Plantation subdivision, raising the amount of WRI's bond from \$35,000 to a total of \$235,000. The Public Staff's motion stated that the Commission had received numerous informal complaints from customers of WRI which described water leaks, low water pressure, billing issues, water outages, water quality issues and customer service issues. Bond Motion, 11, ¶ 32. The Bond Motion also stated in ¶ 33,

In speaking with customers regarding the problems with the Rocky River Subdivision water system, a common theme has emerged – WRI often ignores problems until confronted with sanctions by a regulatory agency. Several customers have recounted that their service complaints to WRI were often ignored, and they were given excuses as to why the problem was not fixed, or told the problem was fixed only to have it reoccur.

The Hearing Examiner notes that several witnesses who testified at the public hearing held in the herein docket, expressed the same sentiment

that WRI ignores problems and responsibilities until confronted by sanctions by a regulatory agency. Indeed, the evidence in the herein docket indicates the same.

WRI raised the same defenses in its reply to the Public Staff's Bond Motion in stating the following:

[The] motion provides an incomplete recitation of the record in this proceeding and includes statements that lack evidentiary support, omitting or ignoring, for example, the most recent actions taken by the Company to resolve the DEQ deficiencies and to keep the Commission apprised of its actions to do so. WRI states that it accomplished the acquisition of the necessary easement on October 18, 2022, after a diligent two-year effort to work cooperatively with the landowner and avoid litigation, and that it "is making concrete progress and substantial investment to comply [with the Compliance Plan], and that any delay in compliance has resulted from factors beyond the Company's control." ....WRI notes its efforts to improve customer service and denies that it only takes action under threat of regulatory consequences. WRI argues that the Public Staff has presented a one-sided view based on stale facts unfavorable to the Company and ignored the Company's most recent efforts. (Sub 8 Order Granting Public Staff's Motion to Require WRI to Increase Bond (Bond Order), p. 3)

10. On July 10, 2023, the Commission issued its Bond Order in Sub 8 granting the Public Staff's motion and requiring WRI to supplement its then current bond on file with the Commission with an appropriate new bond and surety in the amount of \$200,000 allocated to the Rocky River Plantation system. Primary among the evidence upon which the Bond Order was based was the continued failure of WRI to comply with DEQ regulations requiring a second water supply for Rocky River. The

Commission also referred to the PWS's NOV to WRI for violation of the Combined Radium Standard in one of two wells in Rocky River (Well #1) during the period of January 1, 2018, through December 31, 2018, which ordered WRI to return to compliance by June 30, 2019. WRI's noncompliance led to the filing of a Complaint and Motion for Injunction, and Consent Judgment.

As noted by this Commission, which quoted the Consent Judgment,

As stated in the Consent Judgment, the consequences of having only one well for the Rocky River system is a significantly elevated public health risk. Any disruptions, outages, or failures of the sole remaining well elevate public health risk due to inadequate pressure in the distribution system which provides opportunity for contaminants to enter the system. Additionally, disruptions in water service further elevate public health risk as washing hands, flushing toilets, bathing, and food preparation are compromised. It has now been four years since Well #1 was taken offline, and the community has been served during that time solely by the remaining well.

The Commission's decision also put emphasis on WRI's failure "to return the system to compliance over the past four years, and the uncertainty of when, if ever, that will happen despite Commission, DEQ, and Court mandates" provided sufficient evidence to support the Public Staff's request for WRI to increase the amount of its bond posted with the Commission. Bond Order, p.7.

## II. Failure to Comply with DEQ Rules and Superior Court Mandates

The Hearing Examiner takes judicial notice of the history of non-compliance enumerated in Findings of Fact Nos. 31-42, which list the history of

DEQ-issued NOVs from December 17, 2018, through June 13, 2019, and subsequent enforcement actions that were taken because WRI did not comply with DEQ and EPA regulations.

### **Discussion and Conclusion**

Based on the entire record and the testimony of Company witness Abbott and the testimony of Public Staff witness Houser, the Hearing Examiner finds that the following facts have been established and are uncontested:

1. Two operable wells were necessary at all times in the Rocky River service area.
2. North Carolina Administrative Code, Title 15A, Subchapter 18C, Rule .0402(g)(5) [15A NCAC 18C.0402(g)(5)] requires that a residential community water system using well water as its source of supply and designated to serve 50 or more connections, must provide at least two wells. If a second well cannot be provided, another approved water supply source may be accepted.
3. At the time that Well #1 was taken out of service, WRI was aware that the system was required to operate two wells, because its system served more than 50 customers.
4. DEQ formally approved WRI's request to inactivate Well #1 in September of 2019, and notified WRI that a NOV would be forthcoming for

failure to have at least two wells or another approved water supply source.

5. WRI informed DEQ on August 12, 2019, that it intended to interconnect with the Town of Harrisburg to obtain a second approved water supply source for the Rocky River system.

6. The interconnection with the Town of Harrisburg was completed and in service on or about December of 2023 and WRI informed DEQ that the interconnection was completed and in service in December 2023.

During the cross-examination of Company witness Abbott, counsel for the Public Staff confirmed that in December of 2018 the Company became aware of the elevated radium level in Well #1. *Id.* at 38. Witness Abbott also testified that although WRI didn't "officially" take the well offline, '[i]n fact it had been inactive for almost four years prior to that.' *Id.*

Mr Abbott admitted that in order to be in compliance with DEQ regulations, WRI had to have an alternate source-two water supplies. *Id.* at 39. Mr. Abbott also contended that while WRI had only one well in service during the past four years, customers were not placed at health risk. *Id.* Although Mr. Abbott contended that the risk of customers being without water was low in his opinion, he admitted that if an outage extended beyond 48 hours, there would be a period of time when customers would be out of water. *Id.* at 41.

The Public Staff verified during cross-examination of witness Abbott that on February 6, 2021, DEQ issued a penalty against the Company for \$4,500

because WRI had not found an alternate source of water for the Rocky River subdivision. Mr. Abbot admitted that although he did not contest or appeal the decision, he did not pay the fine. *Id.* at 41-42. Mr. Abbott also testified that he discussed the payment with DEQ immediately after the penalty was issued and it was understood that the Company could wait until the interconnection was resolved, was finalized and then decide on any type of penalties that needed to be paid. *Id.*

On cross-examination of Company witness Abbott, the Public Staff questioned Mr. Abbott about the following documents, which were admitted as exhibits. The Public Staff introduced and entered into evidence Abbott Cross-Examination Exhibit 1- Complaint and Motion for Injunctive Relief that was filed in the Cabarrus County Superior Court on June 18, 2021, by the NC DOJ, which listed approximately 23 statements of fact. When asked whether the statements of fact were true, Mr. Abbott replied that they were true. One of the findings of fact noted that after giving WRI an 18-month extension of time to comply with the requirement to have in place another water source, less than ten days before the expiration of the extension, WRI notified DEQ that the new construction could not be completed due to its failure to obtain requisite easements. *Id.* at 46-47. When asked whether waiting until ten days before the Company was to have the job completed was reasonable, Mr. Abbott alleges that he and his attorney were having ongoing conversations with DEQ on what progress was being made. Mr. Abbott alleged that he did not know why this information regarding conversations had not been included in DEQ's reports. Nonetheless, Mr. Abbott admitted that

the allegations in the DOJ Complaint and motion for injunctive relief were not inaccurate. *Id.* at 48. Items 22 and 23 of the factual allegations of the DOJ Complaint states as follows:

On February 3, 2021, the PWS Section assessed an Administrative Penalty against Defendant in the amount of \$4,500 plus a continuing penalty of \$50 per day until Defendant demonstrates that the water system has returned to compliance. In order to resolve the penalty, Defendant was advised that he must return the water system to compliance and pay the total penalty amount within 60 days of service of the penalty. Defendant was also advised of his right to appeal the assessment of the penalty. A copy of the Administrative Penalty is attached hereto as **Exhibit 9** and incorporated herein by reference.

Defendant received the penalty assessment on February 6, 2021. Defendant did not appeal the assessment. As of April 9, 2021, payment had not been received, and PWS Section staff sent a letter on that date to Defendant advising that the PWS Section was preparing to refer the matter to the North Carolina Attorney General's Office to proceed with a collections action. The PWS Section further advised Defendant that Defendant must take immediate and appropriate action to return to compliance, and that the PWS Section reserved the right to initiate additional legal action through the Attorney General's Office to resolve the ongoing non-compliance issues at the water system. A copy of the April 9, 2021 letter is attached hereto as **Exhibit 10**, and incorporated herein by reference. DOJ Complaint and Motion, p. 7-8.

The Public Staff introduced and entered into evidence Abbott Cross-Examination Exhibit 2- entitled, "Consent Judgment". Counsel for the Public Staff reviewed with Mr. Abbott a section of the Consent Judgment, which stated "Defendant's continued noncompliance exposes residents at the Rocky River Plantation Subdivision to significantly elevated public health risks". *Id.* at.49. When asked whether Mr. Abbott disagreed with the statement, he admitted that

“there was a health risk for them not to have water supply if the well went down.”

*Id.* at 50.

Counsel for the Public Staff also directed Mr. Abbott’s attention to a paragraph that stated, “[t]he parties expressly waive any argument that the recitation of the above Findings of Fact and Conclusions of Law is insufficient to support the injunctive relief ordered below.” *Id.* at 51. On cross-examination, Mr. Abbott also agreed that the Consent Judgment held the Motion for Injunctive Relief in abeyance as long as WRI filed a compliance plan and agreed to various milestones and engineering certifications until the interconnection with the Town of Harrisburg was completed. *Id.* at 52.

The Public Staff introduced and entered into evidence Abbott Cross-Examination Exhibit 3 - “Motion for Entry of Order to Show Cause For Civil Contempt” (Show Cause Motion), which was filed by the DOJ on September 12, 2022. The Public Staff noted that Motion was filed three days after WRI was supposed to have the interconnection completed. Witness Abbott admitted that the Show Cause Motion was filed because WRI had not met its deadline to finalize the interconnection with the Town of Harrisburg. *Id.* at 54-55. As read into the record, page 2 of the Show Cause Motion stated that “pursuant to the Consent Judgment, Defendant is required to perform the following actions set forth in the plan: complete construction and submit an Engineer certification and Certification for a completed interconnection to the Town of Harrisburg by September 9, 2022.” *Id.* at 55.



The verified Show Cause Motion, which stated that upon a visit to the Rocky River Plantation public water supply system, contained an observation of the PWS staff member that:

There were no sign that construction of the interconnection to the Town of Harrisburg had been constructed, and too, moreover, there were no signs of any activity on site related to construction of the interconnection, nor were there any signs that construction of the interconnection had ever -- had even been initiated. *Id.* at 55-56.

When questioned about the veracity of this statement, Mr. Abbott agreed that the statement read into the record was correct. *Id.* When asked whether Mr. Abbott had informed DEQ that WRI would not be able to complete construction by September 9, Mr Abbott stated that the Company provided regular updates to DEQ regarding the status of construction and the activities WRI was performing to comply with the plan, and he therefore surmised, “[a]nd so by submitting those updates, it was easy for them to see we were woefully behind in getting things done that needed to be done and they could easily see that there was no way construction was going to begin or be completed by that time.” *Id.* at 58-9. Mr. Abbott, however, also admitted that WRI did not contest the factual allegations in the Motion to Show Cause. Mr. Abbott also stated that he understood that if he did not appear in court and prove why he did not willfully comply with the Motion to Show Cause, he could go to jail. *Id.* at 58.

The Public Staff introduced and entered into evidence Abbott Cross-Examination Exhibit 4-Amended Consent Judgment, which was entered into

between WRI and DEQ on November 7, 2022. Mr. Abbott reviewed the Amended Consent Judgment and agreed that the Company had to agree to certain prescribed actions in order for DEQ to allow WRI more time to complete the interconnection. On cross-examination, Mr. Abbott admitted that if WRI did not comply with the terms of the Amended Consent Judgment, he waived his right to contest an order finding him in contempt of court.

The Public Staff introduced and entered into evidence Abbott Cross-Examination Exhibit 5, which was the Commission's "Order Granting Public Staff's Motion Requiring Increase in Bond". Mr. Abbott stated that the Commission's Order did not misstate any facts. *Id.* at 65. Finally, in answer to the question of whether the recitation of facts in the Commission's Order indicated "a pattern of noncompliance regardless of whether WRI had an excuse or not, Mr. Abbott admitted that there was a pattern, but took issue with the use of the word "excuse". He stated instead that they were "[n]ot excuses but facts involved as to why there was ongoing delays." *Id.* at 65.

Finally, Mr. Abbott was asked whether if WRI had complied with all timelines and met its deadlines prior to June 17, 2021, would the DOJ have needed to file a complaint on motion for injunctive relief. Witness Abbott replied that he thought the (Cabarrus County Superior Court) found that the reasons for the delays were justified and WRI was never found to be in willful contempt of court; however, he stated, "But you're absolutely correct, if we

would have completed it by the 21st then that wouldn't have been necessary for that to be filed.”

WRI provided reasons, rationales, and excuses for why it failed to timely comply with deadlines but did not provide evidence of the same. Although witness Abbott explained that he kept DEQ apprised of his progress on completing the Harrisburg interconnection, or lack thereof, before and during the interim periods between when the DOJ filed its Motion for Injunctive Relief and Motion to Show Cause, which transpired over a four-year period. Witness Abbott, however, testified that not once did he communicate in writing with his contacts at DEQ, with whom he stated he was in regular contact, the status of, progress of, or hindrances to his ability to begin, effectuate, or complete the promised interconnection to the Town of Harrisburg. Therefore, Mr. Abbott was unable to provide support for his allegations and the Company neither provided confirmation from any DEQ official nor contested the allegations made in the official verified motions and complaints filed by the DOJ.

Based on the substantial evidence, the Hearing Examiner finds and concludes that WRI has a history of noncompliance and of failing to abide by orders until the very last minute. Although, the Hearing Examiner accepts that WRI was not responsible for the initial radium exceedances in Well #1; acquiring easements, necessary supplies, and engineering assistance could certainly be impacted by the pandemic the world experienced during 2019-2020; and delays are inevitable in any construction endeavor. However, the weight of the evidence

indicates that WRI engaged in unreasonable delay and consistently disregarded NOVs, fine and penalties, Orders and Consent Judgments, and customer complaints.

Therefore, despite the contention of the joint witnesses who filed the Joint Rebuttal Testimony, the Hearing Examiner is thus not persuaded by the Company's implicit contention that it should not be penalized because customers were never harmed. The very risk of harm, probable angst, and the continued uncertainty experienced by customers while they waited four years for protection against a potential devastating loss of water, which fell on deaf ears, was indeed harmful to customers.

#### **EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 43- 54**

##### **Adjustments To Plant In Service Related To Town of Harrisburg Interconnection**

The evidence for these findings is found in WRI's application, the pleadings, the direct testimony of WRI witness Abbott, WRI's Joint Rebuttal Testimony; the testimony and exhibits of Public Staff witnesses Houser and Feasel, and the late-filed exhibits of Public Staff witnesses Houser and Feasel.

The primary driver of the Company's Application is the costs of the interconnection with the Town of Harrisburg, which was required by DEQ to maintain the provision of adequate water service and ensure safe drinking water in the Rocky River service area. This is a fact that is uncontested.

### **Removal of Legal Fees**

Public Staff witness Houser The Public Staff made adjustments to remove (1) unsupported legal fees from 2021; (2) all legal fees related to preparing for hearing, consulting with WRI and other parties, and representing WRI in contempt and other proceedings relating to WRI's failure to comply with the Consent Judgment entered into between WRI and DEQ on July 15, 2021; and (3) half of all legal invoices related to the Consent Judgment and Amended Consent Judgment dated November 8, 2022, issued by the Court .

The Company's joint witnesses contend that "the Public Staff provides no evidence that the cost to consumers would have been less had the interconnection been completed sooner. Witness Houser maintains that customers were in greater risk while there was only one well for the system, but as Well #2 remained in operation and as storage was available, the risk never materialized into service disruptions." T. vol. 3, 57.

Company witness Abbott states in his direct testimony that although taking Well #1 offline was the result of conditions beyond the Company's control, the Company was in technical violation of the requirements of DWR. T. vol. 2, 25. Mr. Abbott further explained his version of the sequence of events: (1) as a result of conditions beyond the Company's control, an action was filed in the Superior Court through which DWR sought to obtain an injunction to force the Company to rectify the fact that only one well was available; (2) the DOJ asked for authority to hold the Company in contempt for its failure to rectify the problem; (3) after the

action was filed, on November 7, 2022, the parties entered into an Amended Consent Judgment that set forth requirements WRI was obligated to meet; and 4) failure to meet the requirements could have resulted in a finding of contempt. Mr. Abbott contended, however, that the standard for imposition of sanctions for failure to comply with the Amended Consent Judgment was that the Company would have been shown to be willfully out of compliance and no showing or finding of willful noncompliance was made. *Id.* at 25.

In its Joint Rebuttal Testimony, WRI states that the Commission should reject the disallowance of legal fees, because it conflicts with Commission precedent, and that Public Staff witness Houser does not have the credentials to express an opinion on the issue other than to rely upon the advice of Public Staff counsel. Additionally, the joint witnesses further state, “The substantial legal fees Witness Houser recommends for disallowance were incurred by the Company in its successful efforts to resist fines and penalties in court actions undertaken by DEQ and successful efforts to avoid potential DEQ efforts to hold the Company in contempt for its inability to rectify the removal from service of Well #1 within the time the DEQ wished. Tr. vol. 3, 63.

In its joint rebuttal testimony, the Company witnesses discuss the authority and a recent Commission order that it believes provides controlling precedent for disapproving the Public Staff’s proposed disallowances. The rebuttal testimony recounts the testimony of Public Staff witness, Charles Junis in Docket No. E-7, Sub 1146. The rebuttal witnesses discuss the statement made on page 88 of Mr.

Junis' testimony wherein he testified that, based on advice from counsel, it was his understanding that North Carolina law supports exclusion of some expenses related to violations of utility law. The North Carolina Supreme Court ruled that legal expenses incurred by a water utility in defense of a penalty proceeding must be excluded from rate recovery as a matter of law. Witness Junis cited the Glendale Water case, *State ex rel. Utilities Comm'n v. Public Staff*, 317 N. C. 26, 343 S.E.2d. 828 (1986).

The joint rebuttal witnesses further stated that the Commission in Docket No. E-7, Sub 1146, rejected the Public Staff's proposed disallowance of litigation expenses that the Public Staff contended were associated with a penalty proceeding in which the utility had been found to have violated the law. The Hearing Examiner takes judicial notice of the fact that the Commission's Order in Docket No. E-7, Sub 1146, was reversed and remanded in part because the N.C. Supreme Court determined that the Commission did not properly consider and make findings and conclusions concerning all other material facts as required by N.C.G. S. 62-133(d); therefore, it carries no weight in the Hearing Examiner's decision in this matter. On cross-examination of Company witness Abbott, the Public Staff brought this fact to the attention of the Company. Tr. vol. 3,121-22.

The Joint witnesses cited, however, to the Glendale Water case, which supported the proposition that legal expenses related to Glendale Water, Inc., (Glendale) a regulated utility, that was penalized for violating serious

administrative regulations, including its failure to notify its customers of contaminants in the water. The Commission held that:

[I]t would be improper to require the very class of people the DHS sought to protect in assessing the penalty against Glendale to indirectly pay for the penalty through the inclusion of related legal fees into Glendale's operating expenses. Furthermore, since these legal fees could have been avoided had Glendale initially carried out its responsibility of providing adequate water service to its subdivisions, this expense cannot properly be considered reasonable and necessary.

*State ex Rel. Utilities Comm. v. the Public Staff*, 317 N.C. 26, 41 (N.C. 1986)

In their analysis of the *Glendale* case, WRI's joint witnesses do not dispute that the Glendale Water establishes a precedential standard; however, they state that "[t]he distinction between this case and Glendale Water is that there is no finding of liability in the other litigation brought against the Company, or admission by the Company in that litigation that any violation actually occurred; and that no intervenor introduced evidence in this case that any violation actually occurred." *Id.* at 72-3. Additionally, the Company's joint witnesses state that "[l]itigants settle disputed matters frequently for many reasons that are unrelated to the settling parties underlying views on the merits of the dispute." *Id.* at 73.

### **Discussion and Conclusions**

The Hearing Examiner is unpersuaded by the Company's characterization of the actions of WRI and its contention it has not been found liable nor has it admitted to liability. The facts that are undisputed and to which WRI witness



Abbott did admit are: 1) WRI violated the North Carolina Drinking Water Act contained in Article 10, Chapter 130A of the North Carolina General Statutes (Drinking Water Act) and the rules promulgated thereunder at its Rocky River subdivision; 2) WRI violated Rule 15A NCAC 18C .0402(g)(5) for over four years, WRI was assessed a penalty for the violation (although subsequently waived); a complaint and motion for injunctive relief was filed against WRI for continued non-compliance and failure to pay its fine, WRI did not comply with the terms of the first and amended Consent Judgments, which required more compliance and reporting requirements.

Based on its assessment of the substantial evidence and in the exercise of its discretion, the Hearing Examiner determines that the facts of this case are not distinguishable from Glendale Water precedent as the Company contends. Moreover, the Hearing Examiner finds that the principle set forth in the Glendale Water case ruling was applicable to the present rate case for litigation expenses related to WRI's failure to comply with environmental laws and regulations, as is the ratemaking principle that it is not reasonable for consumers to bear costs of utility misfeasance or malfeasance.

The Hearing Examiner notes that based on the previous evidence and conclusions discussed herein, which has established that WRI has a substantial history of non-compliance and a pattern of behavior that has consistently resulted in excessive and unreasonable delays, and a pattern of only responding to notices of violation at the very last minute before deadlines are due, a hearing is

scheduled to address noncompliance, or under threat of prosecution or imprisonment. Based on the evidence and record in this proceeding, the Hearing Examiner finds that there has been a direct correlation between WRI's pattern of noncompliance and unreasonable delays and the need to incur additional, costly, and likely unnecessary legal expenses in obtaining counsel to defend the DOJ's filed Complaints and Motions, negotiate the terms of the Consent Judgments, and assist with filing numerous compliance filings in satisfaction of the Consent Judgment requirements. It is apparent from the detailed record supporting the sequence of events from the first issuance of the penalty to the last Amended Consent Judgment, that when faced with being deemed in contempt and facing jail, Mr. Abbott began complying with deadlines and making timely compliance filings. Mr. Abbott has been in the utility business for a long time and is or should be familiar with common practices and procedures. His failure to respond to deadlines is indicative of a lackadaisical and dismissive attitude, which equates to unreasonable and imprudent actions. The Public Staff's exhibits and late-filed exhibits indicate that the amount of legal fees incurred since the first action filed by the DOJ, and disallowed by the Public Staff amount to \$43,010.24. These are significant legal costs that were necessitated by WRI's unreasonable and unsupported explanations should not be borne by ratepayers, as this would not disincentivize WRI from being proactive in the future.

The Hearing Examiner takes judicial notice of the fact that under Chapter 62 of the General Statutes, and as emphasized by the North Carolina Supreme Court,

[U]tilities have the burden of proving that costs upon which their rates are based are reasonable and prudent, the reasonableness and prudence of those costs are ‘presumed’ unless the Commission or intervenor provides other evidence to cast doubt on the reasonableness or prudence of the costs, at which point the burden to make an affirmative showing of the reasonableness of the costs in question shifts to the utility.

*State ex rel. Utils Comm’n v. Intervenor Residents of Bent Creek/Mt. Carmel Subdivisions*, 305 N.C. 62, 76, 286 S.E.2d. 770 (1982) (*Bent Creek*).

In order to satisfy this burden of production an intervenor must offer affirmative evidence tending to show that the expenses that the utility seeks to recover ‘are exorbitant, unnecessary, wasteful, extravagant, or incurred in abuse of discretion or in bad faith . . . .If a utility expense is properly challenged, [t]he Commission has the obligation to test the reasonableness of such expenses.

*Id.* at 76–77, [286 S.E.2d at 779](#).

## **Discussion and Conclusion**

The Hearing Examiner determines, based on North Carolina law, that WRI has the ultimate burden of proving that its legal expenses, which it seeks to be included in customers’ rates, are reasonable. The Public Staff has provided a substantial amount of evidence tending to show that the legal fees incurred by WRI were to some extent, unnecessary, and, arguably, incurred contrary to customers’ best interests. The Hearing Examiner is unpersuaded by the Company’s argument that it was “successful” and its implicit suggestion that it was vindicated as a result of its involvement of legal counsel. The evidence does not suggest that WRI was vindicated, but, instead, only given additional time and grace to complete the interconnection upon its agreement to stricter requirements and to waive its rights to contest guilt and then be subject to possible jail time for

future (undisclosed) delays. Based on the terms of the Consent Judgment and the Amended Consent Judgment, which was signed by witness Dennis Abbott on behalf of his Company, WRI, in effect, admitted to the long and comprehensive list of specific facts that showed misfeasance and malfeasance, unreasonable actions or inactions on WRI's part in exchange for DEQ's agreement to extend more time to complete the interconnection. Again, the Hearing Examiner notes that the testimony of witness Abbott confirms that WRI did not contest the facts as they were presented.

The Hearing Examiner finds based on the testimony of the witnesses and the preponderance of the evidence and the record as a whole concludes that:

1. Legal fees related to the Consent Judgment were incurred by WRI because of its continued failure to ensure that the interconnection with the Town of Harrisburg was completed within a reasonable time period through inaction, poor communication with DEQ officials and DOJ officials. These unreasonable actions on the part of WRI resulted in a prolonged period of noncompliance when Well #1 was taken offline and the Company operated on a single water source for nearly four and a half years.
2. Rate payers were vulnerable to harm during the prolonged period of non-compliance of WRI, notwithstanding that Well #2 was in operation and as storage was available.
3. It is not fair or appropriate for ratepayers to bear any legal costs

incurred by WRI that were related to defending proceedings relating to show cause proceedings related to WRI's failure to timely complete the Harrisburg connection.

The Hearing Examiner notes that the Company has filed for a 384% increase in rates, which after all adjustments made by the Public Staff is still a substantial increase of 215% in the Rocky River service area.

The Hearing Examiner concludes that it is not fair or appropriate to burden WRI's customers with rates that include costs attributable to WRI's imprudence in unreasonably delaying taking action to comply with DEQ's NOV's and EPA rules and regulations and keep customers safe from possible harm.

The Hearing Examiner concludes that it is not appropriate for ratepayers to bear the total amount of professional fees incurred by WRI as a result of meeting filing requirements pursuant to the Commission's orders and the DOJ's Consent Judgment between DEQ and WRI.

The Hearing Examiner also finds that it is appropriate to remove the specifically identified legal fees in the amount of \$3,195 associated with the proceeding to increase WRI's bond, which was filed by the Public Staff due to WRI's non-compliance, from recovery. WRI failed to remedy the service violations in a timely manner. This conclusion is also consistent with the Commission's determination in its Sub 9 Show Cause Order.

## **Legal Fees Associated with Reporting Requirements**

The Public Staff recommended removing one half of WRI's legal fees that were attributable to its reporting requirements to the Cabarrus County Superior Court, the Commission and DEQ on the progress of the interconnect with the town of Harrisburg.

Based on the evidence and the record in this case, it is a reasonable and appropriate to allow WRI to recover one half of its legal fees related to reporting to the Cabarrus County Superior Court, the Commission, and DEQ on the progress of the interconnect with the Town of Harrisburg as recommended by the Public Staff. Although most of these costs are also related to and are the result of WRI's culpability in its persistent failure to comply with DEQ and EPA regulations and the Consent Judgment, some filing requirements of utilities are customary and an adjustment of one half is a reasonable and appropriate compromise. Based on the authority given the Commission under N.C.G.S. 62-133(d), the Hearing Examiner shall consider all material facts of record that will enable it to determine what are reasonable and just rates.

### **Development Fee**

Public Staff witness Houser adjusted the interconnection project costs by reclassifying the one-time \$97,565 Harrisburg development fee as a plant in service item with an in-service date of 2023. WRI was required to pay a one-time development fee to the Town of Harrisburg in order to connect to its system. The

development fee allows the Company perpetual access to purchase water from the Town of Harrisburg and should be nondepreciable. Witness Houser also reclassified \$3,575 in costs related to the meter fee paid to the Town of Harrisburg as a plant in service item and assigned it a 15-year life, consistent with the Public Staff's typical recommendation for meters.

WRI's rebuttal witnesses argued that all of the costs incurred by WRI to interconnect with the Town of Harrisburg should be combined into a single project for a determination of depreciation expense and an appropriate depreciation rate. WRI testified that the most expensive items of the project were the meter valve, vault, electrical and signaling equipment with useful lives much shorter than pipes. The joint witnesses state that in a response to a WRI data request to the Public Staff, witness Houser compares the development fee to capacity fee payments in an Aqua Utilities rate case, Docket No. W-218, Sub 497, which in their opinion is not comparable. The joint witnesses argue that the capacity fees, discussed in the Aqua Order are for capacity to serve future customers, whereas if the development fee was not paid, the Company would not be allowed to interconnect with the Town of Harrisburg, and you cannot have one without the other. Therefore, WRI contends that the development fees should be included in the total project cost and depreciated.

The Hearing Examiner finds and concludes, based on the evidence, that it agrees with the Public Staff's rationale and basis for determining the development fee is not depreciable.

### **Service Life**

The Company used an in-service date of 2023 and an expected lifetime of 20 years for the project. Public Staff witness Houser adjusted the service life of the Harrisburg interconnection project from 20 to 50 years, which, based on his experience, he believed is more representative of the expected life of the assets, primarily pipe and encasement. Tr. vol. 2, 118.

The Company further stated that the 50-year useful life of the project as advocated by Public Staff witness Houser should be summarily rejected, as the recommendation is based upon an unsupported conclusion without any backup facts or justification. In addition, the joint witnesses noted that in the Sub 8 rate case, the Public Staff recommended a 25-year life for the installation of the water system, and, therefore, the Company was consistent in its use of its recommended service life.

During cross-examination, witness Houser explained the basis for his determination of the useful life of the project was based on the typical life expectancy of ductile iron pipe, which is generally in excess of 100 years. Witness Houser noted that Exhibit N to Aqua North Carolina's application in Docket No. W-218, Sub 573, indicated a depreciation lifetime study result of 58 years for transmission main and distribution main. Witness Houser elaborated that Aqua's depreciation study likely includes plastic as well as all other transmission and distribution system appurtenances, valves, etc., and is all rolled into the expected lifetime. Witness Houser discussed that given the interconnect in this case is



constructed from ductile iron pipe and is restrained for the entirety, he believes 50 years is a reasonable depreciable life, and potentially too short. Tr. vol. 2, 181-82.

In response to examination from the Hearing Examiner, Company witness Perry stated that the Company was attempting to come up with a composite rate. Witness Perry stated that when she reviewed photos of the asset, she saw the meter, wiring, valves and other equipment, and did not agree that it was all pipe. Witness Perry testified that she had looked at Aqua's Exhibit N, but that it seemed to her that there should be some kind of composite rate. Witness Perry stated that she currently works for a water and sewer company which rehabilitates water and sewer pipes after 40-50 years when they go bad, and that they are trying to find a happy medium. She stated that maybe 20 was not the optimal depreciable life and that the Company could have gone with a 25-year life. Tr. vol. 3, 146-49.

The Hearing Examiner's determination of the appropriate asset life time for the Town of Harrisburg interconnection is based upon the expert witness testimony of the Public Staff and Company witnesses, as well as the depreciation study referred to by the witnesses. As discussed by witness Houser, the expected lifetime of ductile iron pipe is significantly longer than that of a typical system's plastic pipe. In the present case of determining a single depreciation rate to apply to the whole project, it would be reasonable to use a composite rate between the expected lifetime of the ductile iron pipe of which the interconnect is comprised, and the other components of the interconnect, namely valves, vaults, and meters as discussed by witness Perry.

The Hearing Examiner finds good cause for use of a composite rate of 50 years for the Town of Harrisburg interconnection project, which is a reasonable middle ground between the expected lifetime of the ductile iron pipe and other components of the interconnect. A 50-year service lifetime is similar to the depreciation study results of other Commission regulated utilities for transmission and distribution main projects.

## **EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 55- 56**

### **Well # 1 & 2 Adjustments**

The evidence for these findings of fact is contained in the testimony of Company witness Abbott, Public Staff witnesses Houser and Feasel, and in the joint rebuttal testimony of Company witnesses Abbott and Peedin and Perry.

Company witness Abbott testified that in August of 2019, the Company had notified DEQ of its plan to take Well #1 out of service. Tr. vol. 2, 25.

Public Staff witness Houser testified that since Well #1 in the Rocky River service area was taken offline on June 30, 2019, it is not used and useful, and all costs associated with WRI's Well # 1 should not be recovered from Rocky River's customers.

Witness Houser testified that he removed costs associated with Well #1, which was no longer in service from test year expenses among other adjustments to represent a reasonable ongoing level of Electric Power expense.

Public Staff witness Feasel testified that she removed costs associated with property tax paid for Well #1, which was no longer in use based on the recommendation of Public Staff witness Houser. Tr vol. 2, 232.

Public Staff witness Houser additionally testified that he removed an item associated with pump repairs from the 2022 test year costs, because the pump and motor were later replaced in 2023. Tr. Vol. 2, 116.

During the expert witness hearing Public Staff witness Houser provided additional information stating that the pump which was installed in 2022 and later replaced was a 45-gallon per minute pump while the Company was approved to use a 78-gallon per minute pump in its Well #2. Witness Houser went on to state that the 45-gallon per minute pumping capacity was insufficient to meet DEQ supply standards. Tr. Vol. 2, 186-87.

Witness Houser went on to testify that DEQ's supply standards are essentially 0.55 gallons per minute per connection of pumping capacity, and that the 45-gallon per minute pump would be insufficient, which lends credit to customer testimony that there were significant outages on a potentially regular basis, which was reasonable to expect given that the Company was operating for some amount of time on a single source and an undersized pump. Tr. vol 2, 197-98.

Company witness Abbott stated that the pump cost approximately \$15,000 and was struck by lightning prior to its retirement. The Company was not able to

recover any money from a warranty or insurance to cover the cost. Tr vol 3, 141-42.

In determining the reasonable ongoing level of expenses associated with the Company's operations, the hearing examiner finds good cause to remove costs associated with Well #1 which multiple expert witnesses have agreed was taken offline in 2019. Based on the recommendations of the Public Staff, the removal of costs related to Well #1's electric connection and property taxes is reasonable.

While the pump which was installed in 2022 and thereafter struck by lightning and replaced represents a not insignificant investment by the utility, given that the Company was aware of issues related to water supply as early as 2019, it seems inappropriate that the Company would install a pump which does not meet its approved design criteria while being aware that customers were experiencing ongoing issues with water outages. It is common practice for Commission regulated utilities to store additional backup materials such as pumps and motors in the event that they experience a mechanical failure. In this instance it seems appropriate that the utility should have had access to a pump which met its design criteria given that it had still not completed its interconnection with the Town of Harrisburg, and there was no other redundancy in its system.

## **Discussion and Conclusion**

The Hearing Examiner's determination on recoverability of costs related to the 2022 pump repairs in the Company's Rocky River service area is based on customer testimony of continued outages, as well as expert witness testimony related to the ability of the pump to meet applicable DEQ supply standards. The Hearing Examiner further understands that during the period the 2022 pump was operating, the utility was failing to meet other DEQ supply standards related to NCAC 18C .0402(g)(5). Commission rules require adequacy of facilities through compliance with DEQ rules. The Hearing Examiner does not find compelling evidence that the 2022 pump repairs represent the provision of adequate facilities or that recovery of costs associated with those repairs is warranted.

## **EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 57 - 60**

### **Disputed Operating and Maintenance Expenses**

These findings are based on the Application and exhibits of the Company and the testimony and exhibits of Public Staff witness Houser.

Public Staff witness Houser testified that he had annualized the costs related to repair piping in the filter building at Rocky River's Well #2 over a three-year period to reach a reasonable ongoing level of expense. He stated that given the magnitude and atypical frequency of this event, this type of repair should not be expected on an annual basis. Tr. vol. 2, 113-14.

The Company's Joint Panel testified to its concern with witness Houser's adjustment stating that water leaks and/or breaks are not atypical, and that it was quite a normal expense which can occur rather frequently over the course of a year. Tr. vol. 3, 82.

During cross examination, witness Houser testified that based on Mr. Abbott's testimony, during the time that well #1 was offline, there were only three events which led to service outages, the maintenance issue in question, and two others due to fiberoptic installers. Mr. Houser stated that based on review of the Public Staff Consumer Service Division's complaints over a three-year period, six of the seven complaints happened at the time of this issue. Mr. Houser concluded that it was reasonable to determine that a break of this magnitude only occurred once in a three-year period, and that a three-year annualization or amortization is reasonable for this maintenance item. Tr. Vol. 2, 190-91.

In response to questions from the Hearing Examiner, witness Houser stated that to annualize the cost of the repair, he had divided the total cost of the repair by three. *Id.* at 200.

Based upon the Company's testimony that in the three-year period in question three line breaks occurred, two of which were due to other entities damaging the Company's water lines, it would seem counterintuitive to conclude that main breaks of this nature are a regular occurrence and happen at a regular frequency, when no evidence supporting a frequency greater than three years is available.

The Hearing Examiner concludes that based upon the testimony of the Company and Public Staff related to the frequency of significant line breaks, a three-year amortization for this particular maintenance item, being the repair of piping at Well #2, is reasonable.

## **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 61**

### **Salaries Expense**

The Company's Application included adjustments to include an estimated ongoing annualized level of salaries for WRI's owner and the office manager/bookkeeper.

Public Staff witness Feasel testified that she first reclassified personal phone reimbursement expense included in salaries and wages to administrative and office expense, as this business expense is not taxable for payroll purposes. Witness Feasel also testified that since the Company included several variations of the number of hours worked by an employee in its application as well as in a subsequent response to a Public Staff data request, and the payroll stubs provided by the Company did not include the number of hours the employee worked; she took the median average of the number of hours per the Company's variations based on the job description provided by the Company. Witness Feasel testified that she then applied an hourly rate of \$20, an estimate of the average pay for an employee performing similar tasks, to the median ten hours per week of work to calculate a representative ongoing level of payroll expense for the employee. Witness Feasel further testified that the representative level of salaries

expense that she calculated and included exceeds the amounts for which the Company provided payroll stubs for the test year; however, she believes the calculation to be a fair representation of payroll expense for the employee given the Company's lack of supporting documentation and inability to support the number of hours worked by the employee. Ms. Feasel recommended that the Company keep time records for employees going forward. Tr. vol. 2, 228-29. In its Joint Rebuttal Testimony, the Company stated that it agreed with the Public Staff's adjustment to reclassify the personal phone reimbursement expense. Tr. vol. 3, 80. The Company, however, expressed concern over the number of hours that the Public Staff included for WRI's bookkeeper, Ms. Beth Lockwood, as well as the rate of pay that was used to calculate the salary expense. The Company stated that Ms. Lockwood was initially hired in 2021 as a customer service representative, but since that time, her job duties have increased substantially, including administrative assistant duties as well. WRI listed several additional duties that it alleges Ms. Lockwood now performs. *Id.* at 80-81. The Company, therefore, maintained that the number of hours included for Ms. Lockwood were too low and that her hours worked should be deemed 15 hours per week. The Company also stated that going forward, "[t]he Company commits to implementing a timesheet requirement for this employee to track time going forward." *Id.*

The Company further stated that its second concern with the Public Staff's adjustment has to do with the rate of pay for someone that does general bookkeeping/administrative assistant work and customer service for a Company.



The joint witnesses testified that, based on their research, the average rates of pay for a bookkeeper in Charlotte, North Carolina, ranges anywhere from \$24 per hour to \$28 per hour for this type of work. The Company further stated that this salary range is consistent with other bookkeeper salaries for small water and sewer utilities that have been approved by this Commission. During the hearing, the Company provided an exhibit from PayChex Flex which stated Ms. Lockwood's pay was \$4,000 annually in June 2021, \$8,000 annually in December 2022, and \$15,000 annually in May 2024.

During the hearing, Ms. Feasel also referenced the Commission's Scheduling Order, in which the Commission stated the Company had up through March 12th to provide the updates to revenues expenses and other rate-based items. Ms. Feasel stated the Company did not provide any supporting document to salaries regarding the rate or hours, nor did the Company provide any updates for the service as indicated effective May the 9th. Witness Feasel stated that if the Public Staff were to update salary for May -- effective through May, it would have to update all the other expenses, as well as accumulated depreciation through the associated time period for the matching purpose. *Id.* at 37-38.

In determining the appropriate amount of salaries expense that should be approved for WRI, the Hearing Examiner takes into account the quality of the responses provided to the Public Staff in its investigation of these costs. The evidence shows that the Company provided the Public Staff with insufficient and inconsistent information to support its request for the 15-hour time and hourly

salary amount. Additionally, the Company's exhibit provided during the hearing shows Ms. Lockwood was earning \$8,000 annually at the time of the update in the case. The Company did not provide any support showing that the \$15,000 it sought in its application was known or measurable until May 14, 2024, with evidence of the amount as of May 9, 2024, both well after the time for which the Company should have provided supporting documentation as requested by the Public Staff to support its request. Furthermore, the exhibit provided by the Company does not indicate hours, hourly rate of pay, or job duties for which Ms. Lockwood is now responsible. The Public Staff recommended an amount greater than the Company was able to support with the payroll invoices provided, and greater than the amount represented in the Company's exhibit for the update period to reflect a fair representative level of payroll expense. Finally, the Company did not provide the documentation of the expense it stated was known and measurable until after the March 12, 2024 update period provided for by the Commission. The Hearing Examiner therefore finds and concludes that the evidence provided by the Public Staff provides a just and reasonable salary expense for Ms. Lockwood. The Hearing Examiner also finds and concludes that the Company shall maintain time records for employees going forward.

## **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 62**

### **Web Design Expenses**

Public Staff witness Houser made an adjustment to disallow the costs of implementing and designing a Company website. Witness Houser also

recommended that the Company be required to have its website completed within six months of the date that an order is issued in the herein case.

The Company stated that it strongly disagreed with this adjustment, as the Company plans to launch its website in early May 2024, which will take place before the close of the hearing in this case. Moreover, after questioning the status of the Company's website, Company witness Perry stated that the website should be operational by June, which is after the close of the evidentiary hearing. Tr. vol. 3, 158.

Based on the evidence and the testimony of the witnesses, the Hearing Examiner agrees with the Public Staff that these expenses should be excluded, because as of the close of the evidentiary hearing, the Company's website is not completed and in service.

## **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 63**

### **Professional Fees**

The evidence for this finding of fact is found in the Company's application, the testimony and supplemental testimony and exhibits of Public Staff witnesses Feasel and Houser, and the joint rebuttal of witnesses Abbott, Peedin and Perry.

Public Staff witness Feasel corrected an error on the Company's Schedule 3(a) and 3(b) for Rocky River and River Walk to reflect the adjusted professional fees supported by the Company's Schedule 3-5, corrected an invoice which

included an incorrect number of billing hours, removed expenses that were outside the test period, reclassified professional expenses related to rate case expense to rate case expense, and removed expenses related to bond filings based on the recommendation of Public Staff witness Houser. The testimony of the WRI joint witnesses stated that the Company strongly disagrees with witness Feasel's adjustments, as she only left in amounts for the tax return preparation and preparation of the Annual Report and there are no ongoing levels of professional expense for customer complaints, bond filings, any other professional fees associated with compliance with any Commission mandate, or fees for any questions for regulatory professionals that may come up. The Company further contended that while removing all of these fees, the Public Staff has stripped the Company of its opportunity to defend itself against any customer complaint or issues that may arise outside of the Company's control or just need clarification or guidance on regulatory issues, and this is completely unfair." *Id.* at 83.

The Hearing Examiner notes the expense amounts included for recovery from ratepayers must be supported, known and measurable, and represent an on-going expense. The corrections recommended by witness Feasel are reasonable, as they state the supported level of professional expenses. Furthermore, the adjustments recommended by witness Houser reflect an ongoing level of expected expenses. It would be inappropriate to reflect an amount for ongoing customer complaints that would rise to the level of needed legal advice, and if such needs did arise, the Company has other avenues to seek

recovery of such costs other than included them as an on-going level. Therefore, the Hearing Examiner finds and concludes that the professional fees expenses recommended by the Public Staff are just and reasonable.

## **EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 64-66**

### **Regulatory Expense**

The evidence for these findings of fact is found in the Company's application, the testimony and supplemental testimony and exhibits of Public Staff witness Feasel, and the joint rebuttal of witnesses Abbott, Peedin and Perry.

#### **Determination of Regulatory Expense**

Public Staff witness Feasel testified that the Company included an estimated amount of regulatory expenses in its application, and she adjusted regulatory expenses to include the actual rate case expenses and expenses reclassified to rate case expense and include an estimated amount for notices, printing envelopes, and postage fees to be incurred after the evidentiary hearing. Tr. vol. 2, 232.

In its joint rebuttal testimony, the Company stated the Public Staff was incorrectly limiting the recovery of rate case expense through the close of the evidentiary hearing.

During the hearing, the Company witnesses noted the Commission's Orders in Dockets E-2, Sub 1300. and E-7, Sub 1276. Per the Commission's Order in Docket No. E-2, Sub 1300, the Commission stated:

Generally, it has been past practice for the Public Staff and the utility to work together to estimate an appropriate amount of rate case expense for approval by the Commission to reflect the activities occurring after the agreed-upon update cutoff date to the conclusion of the hearing or through the preparation of proposed orders.

Additionally, N.C. Gen. Stat. § 62.133(c) was referenced regarding the time period for which items may be updated and included for recovery in rates.

The Hearing Examiner puts significant weight on N.C.G.S. §62.133(c). The statute states in part:

The test period shall consist of 12 months' historical operating experience prior to the date the rates are proposed to become effective, but the Commission shall consider such relevant, material, and competent evidence as may be offered by any party to the proceeding tending to show actual changes in costs, revenues, or the cost of the public utility's property used and useful, or to be used and useful within a reasonable time after the test period.

The Public Staff has stated it will include actual prudently incurred and properly accounted for costs through the close of the hearing, updated for known and measurable costs associated with producing and mailing notices, which aligns with the statute. Additionally, as per the Commission's understanding as stated in its Order in Docket E-2, Sub 1300, the Public Staff's proposal generally aligns with the historic practices.

Regulation is imperfect by nature and all costs by nature cannot always be included through an extended period, as such costs still must be reviewed and determined to be prudently incurred and properly accounted for and then included in revenue requirement for inclusion in rate calculations. The Company seeks to include unknown costs which may or may not be prudently incurred or properly

accounted for through a date for which could require additional Commission orders if the parties cannot agree on the prudence and accounting for the potential costs. As such, the Hearing Examiner finds and concludes that it is reasonable for rate case expenses to include actual costs through the close of the evidentiary hearing as well as known and measurable costs associated with public notices.

### **Amortization of Regulatory Expense**

Witness Feasel also amortized the calculated rate case expenses over a five-year period based on her analysis of the Company's historic rate case filings. Additionally, witness Feasel recommended that if the Company's next rate case filing exceeds the five-year amortization period, starting with the date on which rates become effective in the present case, the Company shall record any overcollection of rate case expense, beginning the first month after the five-year amortization period ends, in a regulatory liability account on a monthly basis. Additionally, witness Feasel recommended that the amounts be recorded in the regulatory liability account and be returned to ratepayers with interest based on the weighted average cost of capital, in a manner determined in the Company's next rate case. Should the Company file for a rate case before the expiration of the amortization period, any unrecovered rate case expense balance would be added in the new rate case expense and amortized over the number of years approved by the Commission in that rate case. Tr. Vol. 3, 88.

The Company rebuttal witnesses, Abbott and Peedin and Perry, opposed the proposed five-year amortization period on the basis that it was not good public

policy. The Company witnesses stated that smaller companies need more frequent rate cases to fund more quality services, and a shorter amortization period is in the public interest. Additionally, the Company witnesses believe this is unreasonable because the amortization period should be based on a normal interval between rate cases, and that five years is not going to be the normal for WRI filing rate cases. The Company therefore recommends that a three-year amortization period be adopted as a more reasonable timeframe. Additionally, the Company states that WRI plans to seek rate increases more frequently to mitigate the one-time impact on customers' rates. Finally, the Company witnesses state that they have reviewed amortization periods for other North Carolina utilities, and three years is the common rate case amortization period for small water and sewer utilities. A three-year amortization recommendation is aligned with what the Commission has normally approved for other small water and sewer utilities. It is fair and reasonable for WRI.

Witness Feasel was questioned during the evidentiary hearing regarding a three-year amortization period versus the five years as recommended by the Public Staff. Counsel for WRI asked Ms. Feasel to verify that for most small water companies the amortization period for rate case expense is three years. Witness Feasel stated that the Public Staff annualizes the years of amortization for companies on a company-by-company basis with some utilities having a three-year amortization period and some have a nine-year period. She noted that it is not a one-size-fits-all recommendation for small companies. Tr. vol.2, 247-48.



Witness Feasel then explained that the time period between the current rate case and the Company's last rate case was five years.

The Hearing Examiner places significant weight on the testimony of witness Feasel. The Public Staff has historically based the amortization of rate case expense over the average time period for previous rate cases, therefore normalizing the expense. The Hearing Examiner also notes that each case should be determined on its own merits, and it would be inappropriate to include an arbitrary average of amortizations of other utilities to determine the amortization for rate case expense in the present case. Based on the foregoing, the Hearing Examiner finds and concludes it is just and reasonable to amortize rate case expenses over a five-year period for this case, which represents the average period over which the Company has historically filed rate cases.

### **Establishment of Regulatory Liability**

The Company's joint witnesses also oppose Public Staff Feasel's recommendation regarding establishing a regulatory liability for any overcollection of rate case expense. WRI views this approach as a "completely new methodology thought up by the Public Staff and has, based on our understanding, never been argued in front of this Commission and has no merit or precedence in Orders issued by this Commission." *Id.*

The Company witnesses further state that over the years, the Commission has approved deferral accounting requests from utilities for various types of matters, including extraordinary maintenance costs, post in-service costs for new

electric generating plants, natural gas pipeline safety costs, and storm damage, but no utility has been allowed deferred accounting treatment on rate case expenses in the past. In addition, regulatory assets/liabilities also can be allowed rate base treatment, and this Commission has been disallowing the unamortized rate case amount in rate base for years now. Hence – rate case expense is not a regulatory asset.

The WRI joint witnesses also argued that since the Public Staff did not request authority from the Commission in a separate petition to defer, track and refund rate case expenses, the request for the regulatory liability should be dismissed from this rate case. Even so, the fact that rate case expense is included in every case that is filed shows that there is no case to be made for it to be considered unusual or extraordinary in nature. In addition, rate case expenses can be material, especially when lengthy litigation arises, as well as a significant amount of discovery requests and onsite audits, although the amortization period helps smooth out high-rate case expenses for customers. The joint witnesses stated that the Company strongly disagrees with the Public Staff's position since the tracking of overcollections of rate case expense would also be considered single-issue ratemaking. Additionally, in their opinion, Items that require the tracking of this magnitude, including regulatory assets and liabilities along with calculated interest, are typically handled in a separate rider outside of a rate case, and are not consistent with the regulatory treatment for reasonable and prudent rate case expenses approved by this Commission. *Id.* at 90

## Discussion and Conclusions

At the evidentiary hearing, the Company cross-examined witness Feasel regarding why establishing a regulatory liability for rate case expense was appropriate absent a more common request for deferral accounting treatment of costs. Witness Feasel stated that under the Uniform System of Accounts (USOA), Section 253, there is a definition of regulatory liability, which she quoted:

This account shall include amounts of regulatory liabilities not included in other accounts imposed by---imposed on the utility by the ratemaking actions of regulatory agencies. The amounts to be included in this account are to be established by those credits which would have been included in net income determinations in the current period under the general requirements of the Uniform System of Accounts, but for it being probable that: One, such items will be included in a different periods for purpose of developing rates that the utility is authorized to charge its utility services or; two, refunds to customers not provided for in other accounts will be required.

Witness Feasel explained that there is a difference between deferral accounting and a regulatory liability, and the two-prong test adopted by this Commission for deferral requests would not be applicable. *Id.* at 29-30.

The Hearing Examiner first takes judicial notice of Commission Rule R7-3, which provides, "The Uniform System of Accounts for Water Utilities as revised in 1984 by the National Association of Regulatory Utility Commissioners, and all subsequent revisions thereto unless otherwise ordered by the Commission, are hereby adopted by this Commission as the accounting rules of this Commission for water companies and are prescribed for the use of all water utilities under the jurisdiction of the North Carolina Utilities Commission having annual gross

operating revenues of \$10,000 or more derived from the sales of water, viz: Uniform System of Accounts for Class A Water Utilities — 1984.” Therefore, the Hearing Examiner acknowledges that establishing a regulatory liability for the purpose of ensuring no over recovery of rate case expense has not been employed often; but the Hearing Examiner after careful review of the evidence and the definition of regulatory liability contained in the USOA accounting rules The Hearing Examiner finds that establishing regulatory liability account for the purpose of accounting for overcollections of rate case expense will protect customers from overpaying expenses that are fully recovered in the event the Company does not come in for a rate case before the amortization period runs its course. Furthermore, overcollection regardless of the size of a utility is inappropriate. The Hearing Examiner finds that while the methodology recommended by the Public Staff provides protection to customers, it does not harm the Company, as it will not impede, in any way, the Company’s recovery of approved rate case expense, regardless of whether the Company comes in for a rate increase before or after the amortization period runs. As stated by Public Staff witness Feasel, if the Company files a rate case before all of its amortized costs are recovered in rates, the unrecovered rate case expense balance will be added in the new rate case expense and amortized over the number of years approved by the Commission in that rate case.

## EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 67- 68

### Rate Base

The evidence for these findings of fact is contained in the Company's application and exhibits and the testimony and exhibits of Public Staff witness Feasel.

Public Staff witness Feasel testified that based on the results of her investigation, Rocky River's original cost rate base as of December 31, 2022, with updates for certain items through December 31, 2023, is \$433,170. The test year level of operating revenue deductions requiring a return is \$99,224. Based on the foregoing, witness Feasel stated that she utilized the rate base method to evaluate the Company's proposed revenue requirement. Tr. vol. 2, 222.

Witness Feasel testified that based on her investigation, River Walk's original cost rate base as of December 31, 2022, with updates for certain items through December 31, 2023, is \$24,160, and the Company's test year level of operating revenue deductions requiring a return is \$34,850. Based on the foregoing, and as allowed under N.C. Gen. Stat. § 62-133.1, witness Feasel stated that she utilized the operating ratio method to evaluate the Company's proposed revenue requirement. *Id.* at 223-24. The Commission finds the methodology employed to calculate the Public Staff's recommended rate base of \$433,170 for Rocky River and \$24,160 for River Walk to be reasonable, appropriate, and supported by the evidence, and is approved for use in this proceeding.

## **EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 69-72**

### **Operating Revenues**

The evidence for these findings of fact is found in the Company's application and exhibits, and the testimony and exhibits of Public Staff witnesses Feasel and Houser.

In addition to the evidence discussed for Findings of Fact Nos. 67-68 above, in Public Staff Accounting Supplemental Exhibit I, Schedule 3a, the level of operating revenue deductions for Rocky River under present rates for use in this proceeding was updated to \$108,529. Operating revenue deductions exclusive of regulatory fee and income taxes amount to \$101,989. In Public Staff Accounting Supplemental Exhibit I, Schedule 3b, the level of operating revenue deductions for River Walk under present rates for use in this proceeding was updated to \$36,592. Operating revenue deductions exclusive of regulatory fee and income taxes amount to \$35,787.

The Commission finds the methodology employed to calculate the Public Staff's recommended level of operating revenue deductions of \$108,529 for Rocky River and \$36,592 for River Walk to be reasonable, appropriate, and supported by the evidence, and is approved for use in this proceeding.

## **EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 73-78**

### **Revenue Requirement**

The evidence for these findings of fact is based on the testimony and exhibits of the Company and the testimony and supplemental testimony of Public Staff witnesses Houser and Feasel.

Witness Feasel testified that she calculated the gross revenue requirement using the overall rate of return of 7.00% recommended by Public Staff Regulatory Analyst Gregory J. Reger. Witness Feasel concluded that the resulting total revenue requirement is \$136,077, of which \$135,229 is attributed to service revenue and \$848 is attributed to miscellaneous revenue. Therefore, the Public Staff recommends that water service rates for Rocky River be set to reflect a service revenue increase of \$92,377 based on the difference between the recommended service revenue of \$135,229 and the service revenue under the present rates of \$42,852 approved in Docket No. W-1034, Sub 8, on November 21, 2018. *Id.* at 222-23. In Public Staff Accounting Supplemental Exhibit I, Schedule 3a, the total revenue requirement was updated to \$138,875, of which \$138,027 is attributed to service revenue, and \$848 is attributed to miscellaneous revenue.

Witness Feasel testified that she calculated the gross revenue requirement for River Walk using the margin on operating revenue deductions requiring a return of 7.00% recommended by Public Staff witness Reger. The resulting total revenue requirement is \$38,073, of which \$37,682 is attributed to service revenue, and \$391 is attributed to miscellaneous revenue. Therefore, the Public Staff recommended that water service rates for River Walk be set to reflect a

service revenue increase of \$2,419 based on the difference between the recommended service revenue of \$37,682 and the service revenue under the present rates of \$35,263 approved in Docket No. W-1034, Sub 8, on November 21, 2018. In Public Staff Accounting Supplemental Exhibit I, Schedule 3b, the total revenue requirement was updated to \$39,097, of which \$38,706 is attributed to service revenue, and \$391 is attributed to miscellaneous revenue.

The Commission finds the methodology employed to calculate the Public Staff's recommended revenue requirement of \$138,875 for Rocky River and \$39,097 for River Walk to be reasonable, appropriate, and supported by the evidence, and is approved for use in this proceeding.

## **EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 79-81**

### **Rate Design**

The evidence for these findings is found in the Company's application and exhibits, the testimony of Company witness Abbott, the testimony and exhibits of Public Staff witness Houser, and in the joint rebuttal testimony of Company witnesses Abbott, Peedin, and Perry.

In its Application, WRI proposes a 40:60 (base facility charge: usage charge) rate design for both service areas. Public Staff witness Houser noted that the current rate design, calculated based on adjusted test year usage at the Public Staff's Billing Determinants, is 41:59 in Rocky River and 50:50 in River Walk.



Witness Houser discussed the magnitude of the rate increase on WRI's customers. He noted that The Company has proposed a significant increase in rates in the Rocky River service area of 384% and in the River Walk subdivision of 62%<sup>1</sup>. Witness Houser stated that the Public Staff has reviewed the Company's expenses and rate base and recommends amounts that are reasonable and representative of WRI's cost of service. Based on this review of the Company's expenses and rate base, the Public Staff recommends rates that would result in an increase of 215% for a customer in the Rocky River subdivision and an increase of 10.5% for a customer of the River Walk subdivision. Based on the magnitude of the rate increase, Public Staff witness Houser recommended a rate design based on a 30:70 base charge to usage ratio. Witness Houser based his recommendation on several considerations. First, witness Houser noted that the Commission has previously said that it "seeks to strike an appropriate balance between achieving revenue sufficiency and stability to ensure quality, reliability, and long-term viability for [a utility company] on the one hand and setting fair and reasonable rates that effectively promote efficiency and conservation on the other hand." See Order Approving Partial Settlement Agreement and Stipulation, Deciding Contested Issues, Granting Partial Rate Increase, and Requiring Customer Notice, Docket No. W-218, Sub 526. Based on this principle, witness Houser stated that the Public Staff recommends a service revenue ratio of 30:70

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<sup>1</sup> Comparison calculated using the average bill at the present and proposed rates with the Public Staff's calculated average usage.

(base facilities charge: usage charge) for each of WRI's service areas. Second, Mr. Houser stated that a lower base facility charge reduces the cost burden to customers for access to utility service before the use of any service and allows customers to have greater control over their total bill by adjusting their usage through conservation and improved efficiency. Witness Houser further stated that the Public Staff's recommended 30:70 rate design ratios have been implemented in his recommended rates and supporting exhibits detailing the billing analysis. Third, a 30:70 rate design would benefit WRI's customers by giving customers more control over their monthly bill, which might benefit the WRI customers who have filed statements about the increasing cost of their water service. Witness Houser also went on to say that "[a] rate design that is more heavily weighted to the volumetric charges gives customers more control over their monthly bill. With the continued rising cost of service, a rate design that achieves an appropriate balance between attaining revenue sufficiency and stability and setting fair and reasonable rates that effectively promote efficiency and conservation, as the Public Staff has proposed, could ease the effects of the rate increases for customers." *Id.* at 125.

Public Staff witness Houser also stated that a 30:70 rate design could also benefit WRI. In support of this proposition, witness Houser stated that WRI's Rocky River service area is operating its interconnection to the Town of Harrisburg on an as-needed basis rather than as a full purchase system. The interconnection may not be utilized regularly, but if it is needed, WRI will purchase water from Harrisburg at a cost of \$11.97 per 1,000 gallons for consumption

between 2,001 gallons and 15,000 gallons, and at \$13.10 per 1,000 gallons for consumption above 15,001 gallons.

Finally, witness Houser stated that utilizing a higher usage rate near or above the purchased water rate has the effect of mitigating the difference between the price paid to the Town of Harrisburg, if the interconnection is utilized, and the amount charged to WRI's customers to recover that cost.

WRI's rebuttal witnesses opposed this rate design ratio and were concerned by it because they contend that a higher base charge provides better stability for the utility. The joint witnesses noted that WRI has been losing money for several years while it was completing the Interconnection project and believe that the 40:60 rate design for both service areas is still relevant for WRI and should be approved. The joint witnesses also stated that the ratio they propose is consistent with recent cases on rate design and pointed out that Aqua's rate design in its most recent general rate case, Docket No. W-218, Sub 873, was 35:65 for water operations, and the Commission approved a rate design of 40:60 for Carolina Water Service in Docket No. W-354, Sub 400.

### **Discussion and Conclusions**

The Hearing Examiner finds that in light of the magnitude of the rate increase in this proceeding even after all of the adjustments of the Public Staff adopted by the Commission, it is reasonable and appropriate for the Commission to attempt to achieve just and reasonable rates for customers, while also mindful

of ensuring the utility earns enough to be able to provide safe and adequate service and have the opportunity to earn a reasonable return. The Hearing Examiner concludes that the 30:70 ratio recommended by the Public Staff, which will be used to calculate the Public Staff's recommended rates, is reasonable, appropriate, fair to WRI's customers, and supported by the evidence, and should be approved for use in this proceeding.

## EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 82-85

### Rates

The evidence for these findings of fact is found in the testimony and exhibits of Public Staff witness Houser and the application and exhibits and joint rebuttal testimony of Company witnesses Abbott, Peedin and Perry.

Using a service revenue ratio of 30:70, the Public Staff recommends a partial rate increase for each service area. The Public Staff's recommended rates are as follows:

#### Rocky River

Base Charge, zero usage:

Residential	\$ 26.32
Bulk (McMillan Acres)	\$ 447.44

Usage Charge, per 1,000 gallons	\$ 11.87
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#### River Walk

Base Charge, zero usage:

Residential	\$ 24.79
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Usage Charge, per 1,000 gallons \$ 13.88

The Public Staff's proposed rates would result in an increase of 215% bill increase for a customer in the Rocky River subdivision and a 10.5% bill increase for a customer in the River Walk subdivision.

Public Staff witness Houser also recommended that the McMillan Acres interconnect base charge be assigned a 17 REU multiplier. Witness Houser stated that under the current rates, the McMillan Acres bulk connection has only been charged a single \$11.20 base charge each month, the same amount charged to individual residential customers; however, there are 17 connections served behind the meter for the bulk customer. The meter will require replacement, and WRI will incur costs related directly to the bulk connection. Mr. Houser also noted that the McMillan Acres interconnect utilizes a 4-inch connection per the testimony of Public Staff Witness David Furr in Sub 8. Witness Houser stated that the Public Staff would typically recommend a base charge multiplier of 25 for a connection of this size; however, due to the circumstances of WRI having a single bulk customer, he believes that a base charge multiplier of 17 is reasonable. Additionally, Mr. Houser stated that if the customer count portion of the billing determinants for McMillan Acres is under-accounted for, then rates for all Rocky River customers would have to be set higher to generate the revenue requirement.

Witness Houser also discussed the magnitude of the rate increase on WRI's customers. He noted that The Company has proposed a significant

increase in rates in the Rocky River service area of 384% and in the River Walk subdivision of 62%<sup>2</sup>. Witness Houser stated that the Public Staff has reviewed the Company's expenses and rate base and recommends amounts that are reasonable and representative of WRI's cost of service. Based on this review of the Company's expenses and rate base, the Public Staff recommends rates that would result in an increase of 215% for a customer in the Rocky River subdivision and an increase of 10.5% for a customer of the River Walk subdivision. Public Staff witness Houser noted that while the Public Staff's recommended rates are less than those proposed by the Company, they would be significantly higher than present rates. As noted above, the primary driver of this rate case is the cost of the Company's required secondary source of water supply, the interconnection with the Town of Harrisburg. Witness Houser stated that based on the Public Staff's investigation, this cost alone constituted over a third of the requested increase filed by WRI. Under North Carolina statute, the Company is entitled to recover its prudently incurred investment, expenses, and a reasonable return.

Company witness Abbott admitted that the rate increase requested by the Company would cause "rate shock" in stating, "I'm very empathetic. I do understand that that would cause rate shock, and, you know, I have been a very empathetic operator of our water systems." Tr. vol. 3, 115.

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<sup>2</sup> Comparison calculated using the average bill at the present and proposed rates with the Public Staff's calculated average usage.

## Discussion and Conclusions

As stated previously, WRI's rebuttal witnesses opposed the rate design ratio proposed by the Public Staff and requested that a 40:60 ratio rate design be approved. This Hearing Examiner in its discretion has already concluded that the Public Staff's recommended 30:70 rate design ratio is reasonable, appropriate and equitable. The Hearing Examiner reiterates its finding that in light of the magnitude of the rate increase in this proceeding even after all of the adjustments of the Public Staff, it is reasonable and appropriate for the Commission to attempt to achieve just and reasonable rates for customers, while also being mindful of ensuring the utility earns enough to be able to provide safe and adequate service and have the opportunity to earn a reasonable return. The Hearing Examiner notes that the Company even acknowledges that the proposed rate increase will cause "rate shock" for its customers. The Hearing Examiner therefore concludes that the methodology employed to calculate the Public Staff's recommended rates is reasonable, appropriate, fair to WRI's customers, and supported by the evidence, and should be approved for use in this proceeding. As to the Public Staff's recommendation regarding the change in base charge for McMillian Acres, the Hearing Examiner recognizes that the Company did not express any opposition to this recommendation in its rebuttal testimony and the Hearing Examiner finds that this recommendation is reasonable and appropriate and should be approved.

IT IS, THEREFORE, ORDERED as follows:

1. That the Schedule of Rates, attached as Appendix A and B, are approved and deemed to be filed with the Commission pursuant to N. C. Gen. Stat. § 62-138 and is authorized to become effective for service rendered on and after the date of this Order;

2. That the Schedules of Rates, attached hereto as Appendix and B, are hereby authorized to become effective for service rendered on an after the effective date of this Order;

3. That a copy of the Notice to Customers, attached hereto as Appendix C, shall be mailed with sufficient postage or hand delivered to all affected customers in conjunction with WRI's next billing process;

4. That WRI shall file the attached Certificate of Service, properly signed and notarized, not later than 10 days after the Notice to Customers is mailed or hand delivered to customers;

5. That WRI shall evaluate the effectiveness of the filter in the Rocky River system, which should include taking source and treated water samples, and also investigate the need for interior cleaning of the elevated storage tank within 12-months of a Commission order in this docket;

6. That WRI shall create an opt-in customer email communication to regularly send announcements to customers in each service area to notify customers of system pressure advisories, outages, or other necessary information in addition to WRI's current door hanger notifications;



7. That WRI shall establish an email communication system within three months of a Commission order in this docket and further be ordered to report to the Commission and the Public Staff when the communication system is in place;

8. That WRI shall fully implement its website within six months of the date of this order;

9. That WRI shall continue to keep a log of customer complaints. The log shall include the date and time the customer contacted WRI or its answering service, a description of the complaint, what was done to resolve the issue, and the date and time that resolution of the issue was communicated back to the customer. A copy of these records shall be filed in this docket on a quarterly basis until further order of the Commission;

10. That WRI shall continue its three-month reporting of its customer contact log, including brief updates on its compliance with the requirements above;

11. That WRI return customer calls within 60 minutes of receipt, and document this in the log book of customer complaints;

12. That WRI respond to outages within 60 minutes of receiving an outage report from a customer, and document this in the log book of customer complaints; and

13. That the Public Staff and Water Resources, Inc. shall work together and, within 10 business days of the date of this Order, file a final revenue requirement and rates that reflect the adjustments ordered herein.

ISSUED BY ORDER OF THE COMMISSION.

This the \_\_ day of \_\_\_\_\_, 2024.

NORTH CAROLINA UTILITIES COMMISSION

A. Shonta Dunston, Chief Clerk

SCHEDULE OF RATES

for

WATER RESOURCES, INC.

for providing water utility service in

ROCKY RIVER PLANTATION SUBDIVISION

Cabarrus County, North Carolina

Monthly Metered Residential Water Rates:

Base Charge	
Residential zero usage	\$ 26.32
Bulk (McMillan Acres)	\$447.44
Usage Charge, per 1,000 gallons	\$ 11.87

Tap on Fee: None

Reconnection Charges:

If water service cut off by utility for good cause	\$ 23.92
If water service discontinued at customer's request	\$ 23.92

Bills Due: On billing date

Bills Past Due: 20 days after billing date

Billing Frequency: Shall be monthly for service in arrears

Finance Charge for Late Payment: 1% per month will be applied to the unpaid balance of all bills still past due 25 days after billing date.

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-1034, Sub 13, on this the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

SCHEDULE OF RATES

for

WATER RESOURCES, INC.

for providing water utility service in

RIVER WALK SUBDIVISION

Mecklenburg County, North Carolina

Monthly Metered Water Utility Service Rates:

Base charge, zero usage	\$ 24.79
Usage charge, per 1,000 gallons	\$ 13.88

Connection Charge: (New Residential Connection Only) \$685.00

New Account Fee: \$ 40.00

Reconnection Charge:

If water service is cut off by utility for good cause:	\$ 40.00
If water service cut off by utility at customer's request:	\$ 40.00

Billing rates per hour for after hours, holidays, weekends \$ 40.00

If payment for water utility service is not received by the past-due date, a customer may, in addition to all past-due and current charges, have to pay late payment finance charges to avoid having water utility service disconnected.

To resume water utility service after discontinuance for good cause, a customer must pay the reconnection charge(s) discussed above, plus any delinquent water bill(s), including finance charges.

<u>Returned Check Charge:</u>	\$25.00
<u>Billing Frequency:</u>	Shall be monthly for service in arrears
<u>Bills Due:</u>	On billing date
<u>Bills Past Due:</u>	15 days after billing date
<u>Finance Charges for Late Payment:</u>	1% per month will be applied to the unpaid balance of all bills still past due 25 days after the billing date.

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Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-1034, Sub 13, on this the \_\_\_\_ day of \_\_\_\_\_, 2024.

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

NOTICE TO CUSTOMERS  
DOCKET NO. W-1034, SUB 13  
BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Notice is given that the North Carolina Utilities Commission has issued an Order granting an increase in rates for Water Resources, Inc. The Order approved a rate increase for the Rocky River Subdivision in Cabarrus County, and the River Walk Subdivision in Mecklenburg County. The Commission has approved the following rates, effective for service rendered on and after the effective date of this notice:

Rocky River

Base Charge, zero usage:	
Residential	\$ 26.32
Bulk (McMillan Acres)	\$ 447.44
Usage Charge, per 1,000 gallons	\$ 11.87

River Walk

<u>Base Charge, zero usage:</u>	
Residential	\$ 24.79
Usage Charge, per 1,000 gallons	\$ 13.88

The Commission also ordered Water Resources, Inc., to continue its reporting requirements and investigate the need for improvements to the water systems, and steps to improve water quality and customer service, including development of a customer website and online bill payment.

This the \_\_\_\_ day of \_\_\_\_\_, 2024.

NORTH CAROLINA UTILITIES COMMISSION

\_\_\_\_\_  
A. Shonta Dunston, Chief Clerk

CERTIFICATE OF SERVICE

I, \_\_\_\_\_, mailed with sufficient postage or hand delivered to all affected customers copies of the attached Notice to Customers and Appendix B as issued by the North Carolina Utilities Commission in Docket Nos. W-1034, Sub 13, and the said Notice to Customers and Appendix B were mailed or hand delivered by the date specified in the Order.

This the \_\_\_\_ day of \_\_\_\_\_, 2024.

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

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

The above named Applicant, \_\_\_\_\_, personally appeared before me this day and, being first duly sworn, says that the required Notice to Customers and Appendix B was mailed or hand delivered to all affected customers, as required by the Commission Order dated \_\_\_\_\_ in Docket Nos. W-1034, Sub 13.

Witness my hand and notarial seal, this the \_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Address

(SEAL) My Commission Expires: \_\_\_\_\_