

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. W-1034, SUB 8  
DOCKET NO. W-1034, SUB 10

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. W-1034, SUB 8	)	
	)	
In the Matter of	)	
Application by Water Resources, Inc.,	)	
for Authority to Increase Rates for Water	)	
Utility Service in Rocky River Plantation	)	
Subdivision in Cabarrus County and River	)	
Walk Subdivision in Mecklenburg County,	)	
North Carolina	)	
	)	ORDER GRANTING PUBLIC
DOCKET NO. W-1034, SUB 10	)	STAFF'S MOTION
	)	REQUIRING INCREASE IN
In the Matter of	)	BOND
Lenny Devitto, 8529 Indian Summer Trail,	)	
Harrisburg, North Carolina 28075,	)	
Complainant	)	
	)	
v.	)	
	)	
Water Resources, Inc.,	)	
Defendant	)	

BY THE COMMISSION: On September 29, 2022, the Public Staff filed a Motion to Raise the Amount of Bond of Water Resources, Inc. (WRI or the Company), requesting that the Commission find that WRI has not provided adequate, safe, and reliable water utility service and direct 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 (Rocky River).

On October 25, 2022, WRI filed a response to the Public Staff's motion, and on November 1, 2022, the Public Staff filed a reply.

On March 31, 2023, WRI filed a report on regulatory compliance issues relevant to the Public Staff's motion. On April 3, 2023, Complainant filed a response to WRI's report generally disagreeing with the Company's assertions and urging the Commission to hold WRI accountable for its lack of urgency.

## SUMMARY OF THE PLEADINGS

### Public Staff Motion

The Public Staff states that WRI posted a bond in the amount of \$35,000, as required by the Commission's order, when the Company acquired the franchise for water utility service in Rocky River from General Utilities Associates in 1993 in Docket No. W-1034, Sub 0. When WRI was granted the franchise to also serve the River Walk subdivision (River Walk) in 2012 in Docket No. W-1034, Sub 6, the bond was modified such that \$10,000 of the \$35,000 bond was allocated to River Walk.

The Public Staff further states that pursuant to N.C. Gen. Stat. § 62-110.3(a) and Commission Rule R7-37, a water or sewer utility company must furnish a bond in an amount to be determined by the Commission when granted a franchise, and the bond "shall be conditioned upon providing adequate and sufficient service within all the applicant's service areas." Section 62-110.3(c) provides that "[t]he utility, the Public Staff, Attorney General, and any other party may, at any time after the amount of a bond is set, apply to the Commission to raise or lower the amount based on changed circumstances." In setting the amount of the bond, the Commission shall consider and make appropriate findings as to (1) whether the applicant holds other water or sewer franchises in this State, and if so its record of operation; (2) the number of customers the applicant now serves and proposes to serve; (3) the likelihood of future expansion needs of the service; (4) if the applicant is acquiring an existing company, the age, condition, and type of the equipment; and (5) any other relevant factors, including the design of the system.

In support of its request that the Commission increase the amount of the bond required for WRI by \$200,000 from \$35,000 to \$235,000, the Public Staff cites (1) to the recent complaints filed against WRI concerning water leaks, low water pressure, billing issues, water outages, water quality issues, and customer service issues and (2) to the failure of WRI to maintain the system in compliance with the safe drinking water laws and regulations enforced by the North Carolina Department of Environmental Quality (DEQ). Regarding DEQ, the Public Staff references various deficiency notices issued by DEQ that were pending at the time of WRI's 2018 rate case and another resulting in a Consent Judgment that was issued when one of the two wells on the system was required to be taken offline due to high radium levels. The Consent Judgment required WRI to submit a plan to DEQ to interconnect the system to the Town of Harrisburg, to install a treatment system for the affected well, or to install a new well. According to a Fourth Revised Compliance Plan submitted to DEQ and dated July 1, 2022, WRI committed to complete the interconnection to the Town by September 9, 2022; and to place the interconnection in active service by October 10, 2022. The Public Staff states that WRI has neither completed the interconnection nor paid the \$100,000 connection fee required by the Town.

The Public Staff argues that the amount of bond set pursuant to N.C.G.S. § 62-110.3 and Commission Rule R7-37 should help ensure the continued provision of adequate and sufficient water service in the event a water utility is unable to provide such service due to financial constraints, mismanagement, or other factors, and that a higher risk of deficient water service necessitates a higher bond amount. For purposes of

N.C.G.S. § 62-110.3(c), which allows the Commission to set a new bond amount when changed circumstances indicate an increased risk of deficient water service, such an increase can be demonstrated by changes in the utility's track record of service; system performance; compliance with state environmental law; compliance with Commission laws, rules, or orders; the nature and scale of customer complaints; expansion plans; and utility expenditures necessary to address such changes.

The Public Staff alleges that since the 2018 rate case, WRI's quality of service has been inadequate. The deficiencies identified by the Public Staff and agreed to by WRI in the 2018 rate case were only remedied after the Commission threatened sanctions against WRI. Numerous water outages have occurred. One of the wells supplying water to the Rocky River is out of service due to elevated levels of radium, and after four years, WRI has yet to secure a secondary water supply, even under the threat of contempt sanctions under the Consent Judgment. With WRI's track record of not acting unless under the threat of sanctions from regulatory agencies, numerous water supply outages, poor quality of service, and contempt proceedings in the Superior Court of Cabarrus County, a \$35,000 bond is inadequate to ensure its customers receive adequate, safe, and reliable service in the event of WRI's abandonment or effective abandonment of its water system, which would necessitate appointment of an emergency operator. An increased bond amount of \$235,000 would provide the funds necessary to cure the deficiencies identified in the rate case, connection fees, and capital improvements, and the operation and maintenance expenses.

## **WRI Response**

WRI responds that the Commission may not make a decision based on the current record and that the Public Staff's motion should be dismissed. Pursuant to N.C.G.S. § 62-65(a), the Commission's decisions must be supported by competent material and substantial evidence upon consideration of the whole record. WRI argues that the unverified motion of the Public Staff is not evidence, and a full record will demonstrate that no increase in bond amount for WRI is warranted. Moreover, states WRI, the Public Staff's 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 further asserts that certain statements provided by the Public Staff are simply false, for example relying on historical consumer complaints and ignoring more recent data, and that the Company cannot address alleged informal complaints referenced by the Public Staff without specific details. 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. Further, states WRI, the Public Staff's motion is inconsistent with its own report and recommendations filed in December

2021 in which the Public Staff declared that the Rocky River Plantation Subdivision was not in imminent danger of losing adequate water utility service nor was it necessary to appoint an emergency operator. Lastly, WRI states that its efforts to resolve the environmental compliance issues raised in the Public Staff's motion will reduce the risk of the Company providing inadequate, inconsistent, or insufficient water service. The completion of the interconnection with the Town of Harrisburg should reduce that level of risk to near zero, which would justify only the statutory minimum bond amount of \$10,000.

### **Public Staff Reply**

In response to the evidentiary concerns raised by WRI, the Public Staff notes that the information provided in its motion and upon which it is based comes from the Commission's files, to which the Commission may take judicial notice. The Public Staff additionally offered to provide a witness to testify as to the truth of any matters and attached a verification page intended to apply to the information provided in its motion.

Regarding the substance of its motion, the Public Staff emphasizes that the current bond amount was set based on the facts and circumstances at the time and that the bond amount "is much too low given the current circumstances and the actions, or lack thereof, of WRI." The Public Staff disputes that its motion is inconsistent with its earlier report and recommendations. Discounting WRI's "minimal progress" in 2021 and 2022, the Public Staff notes that only after filing of this motion has WRI finally acquired the easement necessary for the interconnection with the Town of Harrisburg. The Public Staff further points to WRI's statement in its response that after multiple extensions it is still "working to secure financing necessary to provide funds to complete the interconnection project," which WRI had stated in another filing would take another ten months once the easement was obtained. This, states the Public Staff, "is yet further evidence of WRI's pattern of delay and recalcitrance in correcting violations." Thus, the Public Staff reiterates its requests that the Commission find that WRI has not provided adequate, safe, and reliable water utility service and that the Commission direct WRI to post an additional bond in the amount of \$200,000 allocated to the Rocky River Plantation subdivision.

### **WRI Report**

Subsequent to the filing directly in response to the Public Staff's motion, on March 31, 2023, WRI filed a report on regulatory compliance issues including (1) a report on WRI's efforts to restore the Rocky River Plantation Subdivision service area to compliance with certain environmental regulations; (2) a report on customer concerns related to service disruptions; and (3) a report on the Company's financial status, need for rate relief, and establishment of a regulatory asset.

First, WRI reports that in its most recent update to the Superior Court on March 7, 2023, WRI stated that it continues to pursue the completion of an interconnection of Rocky River with the Town of Harrisburg, as required by the Consent Judgment. WRI stated that it has obtained a needed easement, developed and submitted various applications and plans for approvals, and made plans to procure the necessary parts and labor to complete the physical work required to accomplish the interconnection. Most recently, the Company

submitted requests for approval of an encroachment agreement with the North Carolina Department of Transportation, which would authorize boring underneath Tom Savage Road for the installation of piping to convey water from the interconnection point to the Rocky River distribution system. The total cost of completing the interconnection is estimated to be more than \$300,000.

WRI further stated in its update to the Court and in its filing with the Commission that it is also exploring the possibility of rehabilitating the green sand filter on Well #1. In this regard, WRI has engaged a professional engineer to assist with the design, testing, and feasibility of this option. If successful, the rehabilitation effort would provide a less time-consuming, less expensive, and less complex resolution of the present violation. WRI was awaiting test results from a smaller scale replacement of the filter media. Since this is not the compliance option required by the Consent Judgement, however, approval will be required by the Court if this alternative is selected.

Second, WRI reports that it replaced the pump on Well #2, the remaining active well serving Rocky River, in February 2023. In connection with that work, WRI notified customers that reduced water pressure or an interruption of water service could result. Neither an interruption of water service nor a material loss of water pressure occurred; however, some customers began alerting state regulators and other state officials that an interruption of service had happened. Around the same time, contractors installing fiber cut several water lines, which did result in a disruption of service but was promptly repaired.

Third, WRI notes that it had filed with the Commission in August 2021 notice of intent to file a general rate case because the Company has been operating at a loss but that it has not yet filed a rate case considering the ongoing regulatory issues and customer concerns. WRI states that the Company has implemented extraordinary measures to control expenses, including its President, Mr. Dennis Abbott, having foregone a regular salary and investing substantial sums of money to stabilize the Company's finances and provide needed capital to meet its regulatory obligations. Lastly, WRI states that it intends to promptly seek rate relief as soon as it has resolved the regulatory issues facing the Company, including emergency rate increases on an interim basis and the establishment of a regulatory asset to account for the significant capital investments made in recent years.

## **DISCUSSION AND CONCLUSIONS**

After careful consideration the Commission finds good cause to grant the Public Staff's motion and require WRI to increase the amount of the bond allocated to Rocky River by \$200,000.

As the Public Staff notes, in Docket No. W-1034, Sub 0 the Commission initially required WRI to post a bond in the amount of \$35,000 when the Company acquired the franchise for water utility service in Rocky River in 1993. When WRI was later granted the franchise to serve River Walk, the bond was modified, but not increased, such that \$10,000 of the \$35,000 bond was allocated to River Walk.

Pursuant to N.C.G.S. § 62-11.03(c), the Public Staff “may, at any time after the amount of a bond is set, apply to the Commission to raise or lower the amount based on changed circumstances.” The Public Staff alleges a number of circumstances that have changed since the initial bond amount was established, particularly in recent years. Although WRI objects to the Public Staff’s motion on evidentiary grounds, there is substantial material evidence in the Commission’s files related to other proceedings involving WRI, of which the Commission takes judicial notice, and WRI’s own pleadings from which the Commission may support a finding of changed circumstances.

Primary among the evidence is the continued failure of WRI to comply with DEQ regulations requiring a second water supply for Rocky River. As stated in the Consent Judgment, a “true and accurate copy” of which was attached as Exhibit A to WRI’s Motion to Make Pleadings More Specific, Motion to Dismiss, and Answer filed on August 19, 2021, in Docket No. W-1034, Sub 10, on December 17, 2018, the Public Water Supply (PWS) Section of the DEQ Division of Water Resources (DWR) sent a Notice of Violation (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. Among other things, the NOV ordered WRI to return to compliance by June 30, 2019, to develop a plan for reducing the amount of contamination in the system, to submit quarterly status reports, and to advise residents of the violation. Two more NOVs were sent to WRI on April 15, 2019, and on June 13, 2019, for continued violation of the Combined Radium Standard in Well #1 during the periods of April 1, 2018, through March 31, 2019, and July 1, 2018, through June 30, 2019. Well #1 was taken out of service on June 30, 2019, as a short-term option recommended by the PWS Section to protect the community while WRI explored options for returning to compliance. WRI knew at that time that this action would violate regulations requiring that the system have at least two wells or another approved water supply source. WRI identified in its August 12, 2019 status report to the PWS Section that the NOV would be resolved by installing a new connection with the Town of Harrisburg. On November 21, 2019, the PWS Section extended the deadline in the December 17, 2018 NOV for WRI to return the system to compliance from June 30, 2019, to September 30, 2020. After WRI missed this extended compliance deadline, the PWS Section issued another NOV to WRI on October 22, 2020, for its continued violation of the requirement for a second well or water supply. In the Consent Judgment, entered into on July 15, 2021, WRI agreed to submit a compliance plan, which it did on August 16, 2021, estimating construction of the interconnection beginning mid-October 2022 and ending in February 2023. According to WRI’s March 21, 2023 report to the Commission, construction of the interconnection had not yet begun at that time.

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. As WRI stated in its March 21, 2023 report, completion of the interconnection will require considerable additional resources, and the

Company has been operating at a loss for many years. The Commission shares the Public Staff's concern that WRI may not have sufficient funds to bring the Rocky River system back into compliance. This system failure, the failure of WRI 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 is sufficient evidence of changed circumstances to support the Public Staff's request for WRI to increase the amount of its bond posted with the Commission.

As the Public Staff notes, one purpose of the bond set pursuant to N.C.G.S. § 62-110.3 and Commission Rule R7-37 is to ensure, to the extent possible, the continued provision of adequate and sufficient water service in the event a water utility is unable to provide such service due to financial constraints, mismanagement, or other factors. In addition to factors such as the number of customers served and the age of the system, the risk of failure and the likelihood that the Commission will have to call upon the bond will also factor into the amount of the bond required. As the Public Staff urges, a higher risk of deficient water service necessitates a higher bond amount. Here, the continued violations of DEQ regulations and the uncertainty of WRI effectuating any resolution have resulted in a significantly higher risk of system failure leading to deficient water service and the potential need for recourse to the Company's bond, which is inadequate to address the identified deficiencies. While the additional \$200,000 may not be sufficient to completely cover all costs, it will provide significant additional customer protection against system failure. The Commission is not insensitive to the other demands on the Company's financial resources and notes that a cash bond is not the only option for WRI to post the additional \$200,000 bond. The additional bond amount may be met with a corporate surety bond or letter of credit, which are also acceptable forms of bond surety.

IT IS, THEREFORE, ORDERED as follows:

1. That WRI shall supplement its 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, for a total bond amount posted by the Company of \$235,000, on or before October 9, 2023; and

2. That this Order shall be served on the Company by United States certified mail, return receipt requested, and on the Company's counsel of record and other parties by electronic mail, delivery confirmation requested.

ISSUED BY ORDER OF THE COMMISSION.

This the 10th day of July, 2023.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink that reads "Tamika D. Conyers". The signature is written in a cursive, flowing style.

Tamika D. Conyers, Deputy Clerk