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**STATE OF NORTH CAROLINA**
**UTILITIES COMMISSION**
**RALEIGH**

DOCKET NO. W-1300, SUB 92

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| In the Matter of<br>Blue Heron Asset Management, LLC and<br>Liberty Senior Living, LLC,<br>Complainants,<br><br>v.<br><br>Old North State Water Company, Inc.<br>Respondent. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>) | **COMPLAINANTS' POST-HEARING BRIEF** |

Complainants Blue Heron Asset Management, LLC ("Blue Heron") and Liberty Senior Living, LLC ("Liberty Senior") (together, "Complainants") submit this post-hearing brief.

## ARGUMENT

This dispute raises two legal questions. First, what tariff order was in effect at the time of sale per Rule R10-20? Second, what is the calculation of REUs as referenced in the effective order? Complainants maintain that the answers to these two questions are straightforward: The Sub 9 Order was in effect at the time of sale, and REUs are determined by the express calculation in Respondent's asset purchase agreement that was the genesis of the Sub 9 Order. Complainants have addressed these two legal questions in their briefing, oral arguments, and proposed order.

Complainants submit this post-hearing brief to address a *fact-intensive* question that, though *not* a part of this dispute, Respondent has repeatedly posed to the Commission: Is it "fair" for Complainants to pay the tariff that was in effect at the time of sale? In raising this question, Respondent argues that Complainants are not entitled to the rate in effect at

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the time because Complainants (i) "slipped in under the wire" to (ii) "escape [their] obligation to pay [their] fair share" of the costs. Tr. p. 7, 42. Respondent's two arguments are irrelevant, unsupported by the record, and—should the Commission decide to explore such outside-of-the-record matters—factually incorrect.

## I. COMPLAINANTS WERE CAPTIVE TO A SCHEDULE CREATED BY RESPONDENT.

Respondent accuses Complainants of intentionally manipulating the timing of events to their advantage. This accusation is not only irrelevant, it is unsupported by the record, and demonstrably false. Respondent, not Complainants, controlled the timing of events: Respondent compelled Complainants to ask to be connected in March of 2021, and Respondent's construction delays resulted in Complainants being unable to connect until 17 months later.

As a threshold matter, there is no "slipped in under the wire" exception to an applicable tariff. Ratepayers' motives for when they request services do not alter the fundamental rule that a utility can only charge the rates that are in effect at the time. Motive is simply not an element of Section 62-139 or Rule R10-20. And the Commission should refrain from injecting such a subjective element into the law. Not only is motive notoriously difficult to prove, there is no workable standard for determining whether a particular motive would justify a utility's deviation from an applicable rate.

In addition, there is no evidence in the record that Complainants rushed the filing of their connection applications to take advantage of soon-to-expire rates. Respondent can point to no evidence of Complainants' intentions, and instead relies only on colorful rhetoric. Indeed, Complainants' attorney pointed out that evidence of Complainants

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intentions was simply not in the record and was unknown by counsel of record. *See* Tr. p. 101–03.

Should the Commission, however, request evidence regarding the timing of the applications and eventual connections, the evidence will show that Respondent—not Complainants—controlled the timing of events.

First, Respondent created a system that forced Complainants to submit connection applications well in advance of when Complainants needed to be connected. Before they could begin construction on their apartment complexes, Complainants needed building permits from Chatham County. Blue Heron, for example, first submitted to Chatham County for a building permit in July of 2020. Chatham County, however, informed Blue Heron that it could not issue a building permit until Blue Heron had secured an Intent to Provide Service Form from Respondent. *Accord* Compl., Ex. A (referencing "the new [permit-approval] system . . . whereby builders or developers receive consent from [Respondent]"). Chatham County implemented this prerequisite to a building permit at Respondent's request, and Respondent made this request because it had determined that, at the time, additional construction would jeopardized the sewage system's compliance with DEQ capacity limits. *See* Respondent's Late-filed Exhibit (Nov. 8, 2023), at 3. Thus, even though Blue Heron only wanted a building permit at the time, Respondent (by way of Chatham County) forced Blue Heron to apply for connection to the sewage system.

Second, Respondent induced Complainants to apply for a sewer connection in the spring of 2021. As shown in its late-filed exhibit, Respondent had placed an indefinite moratorium on commercial sewer connections because the system was at risk of violating

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DEQ capacity limitations. *See* Respondent's Late-filed Exhibit (Nov. 8, 2023), at 3.[1] The moratorium was lifted on March 19, 2021, when Respondent announced that it was accepting "commercial connections to the Briar Chapel system." Compl., Ex. A. At that point, Complainants had the opportunity to request sewer connections and be eligible for building permits. Respondent cannot claim to be surprised that within days of lifting the moratorium, developers would ask to be connected so that they could obtain building permits from the county. Thus, Respondent influenced when Complainants would apply for connections.

Third, Respondent controlled the (belated) timing of Complainants' eventual connections. To connect to the Briar Chapel system, Complainants needed Respondent to complete the construction of the force main and the SD East pump station that would bring Complainants' sewage to the treatment plant. Respondent's construction of the main and pump station, though, was chronically behind schedule. Back in January of 2019, Respondent had promised to complete the force main by March 31, 2019, and the pump station by May 31, 2019. *See* Attach. 1 (Amendment to APA), §§ 1.2.2 & 1.2.3. Not only did Respondent fail to meet that commitment, the main and pump station were still unfinished two years later, when Complainants sought to connect to the system in the spring of 2021. Respondent did not finish the main and pump station until August 4, 2022. *See* Respondent's Late-Filed Exhibit, at 1 (Nov. 8, 2023). Thus, Respondent could not connect Complainants to the system until 17 months after Complainants had asked to be connected.

[1] Please see footnote 3, *infra*, for more context surrounding the moratorium.

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Complainants emphasize that motive is irrelevant and not a part of the record. However, if the Commission were to seek additional evidence about motive, it would show that Respondent forced Complainants to apply for connection in advance of construction, and then, because of Respondent's moratorium, influenced when Complainants would ask to be connected in the spring of 2021 (which was over a year before Respondent would be in a position to connect them).

## II. COMPLAINANTS WERE NOT THE CAUSE OF THE EXPANSION OF THE BRIAR CHAPEL SYSTEM.

Respondent also accuses Complainants of trying to evade their "fair share" of the costs caused by their connection to the sewer system. This accusation, too, is irrelevant, unsupported by the record, and inaccurate.

To start, Respondent's aspersions of unfairness are irrelevant. The financial implications of charging the correct fee cannot overcome Rule R10-20's mandate. The rule is clear and binding: Respondent must charge the rate in effect at the time of the "sale of sewer service," which is when the connection-service agreement is created. If the $1,500/REU connect fee was insufficient to cover the cost of expansion, then it was incumbent on Respondent to request a timely rate increase. If Respondent was tardy to request a rate increase, Respondent is not allowed to remedy its mistake by charging Complainants the higher rate that *came into effect after* the sale of sewer service. The fact that a utility might face financial challenges does not allow the utility to charge ratepayers retroactive rate increases. *See* N.C. Gen. Stat. § 62-136(a) (providing that the Commission shall determine rates "to be *thereafter* observed and in force" (emphasis added)); *State ex rel. Utilities Comm'n v. Farmers Chem. Ass'n, Inc.*, 42 N.C. App. 606, 615, 257 S.E.2d 439, 445 (1979) ("The Commission may not fix rates retroactively[.]").

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Respondent asserts that Complainants "absolutely" caused the need for the plant expansion and the construction of the force main and pump station, claiming that evidence of Complainants being the cause of these investments is "in the record all over the place." Tr. p. 124. That is not accurate. Respondent, despite making such unequivocal statements, cannot point to any evidence in the record that supports them. That is because such evidence is simply not in the record.

Should the Commission wish to inquire into this factual matter, however, it would find that Complainants were not the cause of these investments. The expansion for which Respondent blames Complainants was always part of the plans and was already needed, before Complainants arrived, due to the rapid growth of single-family homes. In addition, Complainants have questions as to whether the costs of the expansion are attributable to Complainants.

**A. Respondent always knew it would have to expand capacity to accommodate a large-scale, mixed-use development.**

From its inception, the Briar Chapel subdivision was conceived as a large-scale mixed-used development comprised of both residential and commercial buildings. Respondent admitted at oral argument that Complainants' developments were included within the CPCN awarded to Respondent. Tr. p. 122. A development map filed with the Commission in 2009 shows a "commercial center" as being included within the initial 250,000 GPD of capacity that was available to the Briar Chapel subdivision. *See* Applicant's Amended Application, *Application for Certificate of Public Convenience & Necessity and for Approval of Rates for Sewer Services for Briar Chapel Subdivision - Chatham County*, Docket No. W-1230, Sub 0 (Oct. 23, 2009), at 33. In 2014, Respondent's application to buy the system shows that SD West (which is where Blue Heron is located)

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and SD East (which is where Liberty Senior is located) were both located within the CPCN territory. *See* Application for Transfer of Certificate from Briar Chapel Utilities LLC to Old North State Water Company LLC - Volume 1, *Application to Transfer Certificate from Briar Chapel Utilities, LLC to Old North State Water Company, LLC*, Docket No. W-1300, Sub 9 (Nov. 7, 2014), at 113–115 (Schedule 3 to the APA).

In addition, when Respondent acquired the Briar Chapel system, Respondent understood not only the large scope of the Briar Chapel subdivision, but Respondent had also agreed to reserve 600,000 GPD of future capacity for the original developer, who could sell the capacity to other developers who purchase land (such as Complainants). *See* Compl., Ex. I, § 4.1(c). In fact, when Complainants purchased their land from the original developer, Complainants acquired a portion of the future capacity that the original developer had reserved for itself. Complainants, thus, did not add unanticipated demands on the system's capacity; their demand had always been part of the plan for Briar Chapel.

**B. The rapid growth of single-family homes required Respondent to expand the Briar Chapel system long before Complainants appeared.**

Several years before Complainants sought to connect to the Briar Chapel system, the growth of single-family homes had created the need to expand the system's capacity.

As background, Respondent had a regulatory obligation to begin expanding the sewer system once the system's flow reached certain thresholds. In North Carolina, a sewage system that reaches 80% of its permitted capacity must submit engineering plans to DEQ for any necessary system expansions. *See* 15A N.C.A.C. 02T .0118(1). Once the system reaches 90% of its permitted capacity, the system must secure necessary permits for expansion and submit a construction schedule. *See* 15A N.C.A.C. 02T .0118(2). Briar Chapel's treatment plant was permitted to handle 250,000 GPD. *See* Compl., Ex. I, § 4.1(b)

("[T]he existing [treatment plant] has been designed to treat 250,000 GPD."); Order Approving Tariff Revision for Connection Fee in Briar Chapel Subdivision in Chatham County, *Application of Old North State Water Company, LLC to Increase Connection Fees for the Briar Chapel Subdivision in Chatham County, North Carolina,* Docket No. W-1300, Sub 71 (Apr. 19, 2021) [hereinafter Docket No. W-1300, Sub 71 Order], at 1 ("Old North State is currently increasing the capacity of the existing wastewater treatment plant from 250,000 gallons per day (GPD) to 500,000 gallons per day (GPD)."). Therefore, once the system's average flow reached 200,000 GPD, Respondent had to submit expansion plans to DEQ; and once the flow exceeded 225,000 GPD, Respondent had to have a construction schedule and necessary permits in hand.

The graph below plots the average daily flow (per month) for the Briar Chapel treatment plant (as reported by Respondent to DEQ), and it also shows the treatment plant's permitted capacity limit and the regulatory thresholds for needing to expand capacity.

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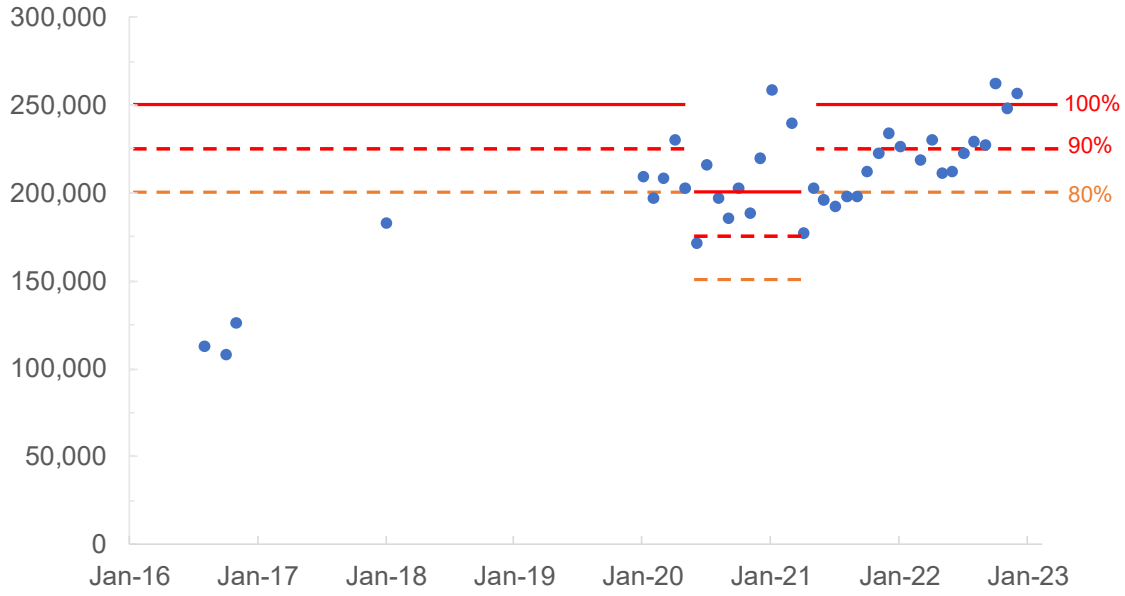
**Briar Chapel Daily Flow Per Month**[2, 3]
(in GPD)




Blue Heron and Liberty Senior did not ask to be connected until the spring of 2021. As the graph above shows, at least a year before Complainants asked about connecting to the sewage system, the growth of single-family homes had already pushed the plant's usage into the range in which Respondent had an obligation to start to expand the system. The reality that the system needed to be expanded long before Complainants arrived is

[2] The data for the chart is based on flows that Respondent reported to DEQ in its monthly Non-Discharge Monitoring Reports. Complainants were not able to find data for several months. DEQ makes these reports available to the public at: https://edocs.deq.nc.gov/WaterResources/Welcome.aspx?dbid=0&repo=WaterResources&cr=1.

[3] From August 2020 to January 2021, Respondent's reports to DEQ show that its system capacity was *reduced to 200,000 GPD* because of constraints in spray-irrigation capacity. Thus, before Complainants ever requested to be connected, Respondent faced a pressing need to address capacity issues, which Respondent temporarily addressed by suspending any commercial connections. DEQ fully restored the total system's permitted capacity to 250,000 GPD on March 19, 2021, *see* Attach. 2 (Mar. 19, 2021, DEQ Notice), which was the day Respondent notified Chatham County that it was allowing commercial connections again. *See* Compl., Ex. A.

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corroborated by various representations that Respondent made to regulators from 2018 to 2020:

- Statements to DEQ about anticipated flow: As early as April 5, 2018, Respondent reported to DEQ that obligated (but not yet tributary) and actual flows to the facility had reached 298,000 GPD. Attach. 3 (May 24, 2018 DEQ Permit Application), at 22. On October 8, 2018, the number had reached 325,000. Attach. 4 (Oct. 11, 2018 DEQ Permit Application), at 17. By May 20, 2019, Respondent informed DEQ that obligated and actual flows were 342,000. Attach. 5 (May 24, 2019 DEQ Permit Application), at 6.

- Statements to DEQ about expansion being "underway": On October 8, 2018, Respondent submitted an application to DEQ for a system extension, in which Respondent stated that "[i]n order to meet projected demands for the project, design for the plant expansion is currently underway." Attach. 4, at 23. When Respondent applied for another sewer extension on May 20, 2019, it made the same representation. Attach. 5, at 10.

- Statements to the Commission and DEQ regarding existing customers: When Respondent applied on March 14, 2019, to transfer the Briar Chapel system to an affiliate, Respondent reported 1,740 connections and that the system could handle 1,740 connections. *See* Application for Transfer of Briar Chapel to ONSWC Chatham North, Chatham County, *Application for Transfer of Public Utility Franchise and for Approval of Rates at Briar Chapel Subdivision from Old North State Water Company to ONSWC- Chatham North, LLC*, Docket No. W-1300, Sub 55 (Mar. 14, 2019), at 3. Those residential customers, at 189 GPD per home, accounted for over 328,000 GPD. On October 19, 2020, Respondent reported to DEQ that there were already 2,028 single-family homes in Briar Chapel, with a committed flow of over 366,000 GPD. Attach. 6 (Oct. 19, 2020 DEQ Submission), at 3–4. (When Respondent applied for a rate increase on March 8, 2021, it reported to the Commission that it "currently has 2,119 residential customers and 21 commercial customers." Docket No. W-1300, Sub 71 Order. Those residential customers alone accounted for over 400,000 GPD.)

In addition to these statements to regulators that corroborate the need to expand the system, Respondent had made a promise to do so long before Complainants appeared. On January 4, 2019, Respondent amended the APA to include deadlines for the completion of expansion work: the force main was due by March 31, 2019; the SD East pump station was due by May 31, 2019; and the plant expansion was due by March 31, 2020. *See* Attach. 1,

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§ 1.2. Thus, Respondent had promised that the expansion would *be finished* a year before Blue Heron and Liberty Senior would ask to be connected.

As an aside, it is important to note that, because the promised expansion was to be completed by March 2020, it would have been funded by the $1,500/REU connection fee in the Sub 9 Order, which was in effect at the time. Thus, although Respondent objects to Complainants paying the $1,500 connection fee, Respondent was content to collect this same fee from homebuilders to fund the expansion to 500,000 GPD. Indeed, Complainants have a reasonable basis to suspect that Respondent allowed at least one developer of single-family residences to "prepay" the connection fee of $1,500/REU for 89 houses in Briar Chapel Phase 14, even though these homes were to be connected after the rate increase would take effect. If Respondent collected $1,500/REU from single-family residences for connections that would occur after the Sub 71 Order, then Respondent should have charged Complainants the same.

A question arises as to why the long-awaited expansion of the Briar Chapel treatment plant would have been postponed for so many years. The answer appears to be Fearrington Village. In 2017, Respondent applied to acquire the sewage system serving nearby Fearrington Village and, in support of its application, Respondent explained its ambition of transforming Briar Chapel's treatment plant into a 1,000,000 GPD membrane bioreactor treatment facility that would handle sewage from Briar Chapel and Fearrington Village. *See* Testimony of Michael J Meyers, *Application for Transfer of Public Utility Franchise of Finch Creactions dba Fearrington Utilities to ONSWC in Chatham Co. Waste*

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*Water Only*, Docket No. W-661, Sub 9 (Dec. 4, 2019), at 9.[4] To pay for the construction of the combined sewage system, Respondent[5] asked to increase its connection fee to $4,000/REU. *See* Motion to Consolidate Dockets, *Application for Transfer of Public Utility Franchise of Finch Creactions dba Fearrington Utilities to ONSWC in Chatham Co. Waste Water Only*, Docket No. W-661, Sub 9 (Aug 22, 2019), ¶ 1. Respondent's proposal faced strong opposition from Briar Chapel residents.[6] In 2020, Respondent abandoned its ambitions and agreed to withdraw its application to acquire the Fearrington system. *See* Attach. 7 (Tri-Party Agreement), § III(c).

After Respondent's plans for a combined system failed, Respondent returned its attention to the expansion of the Briar Chapel treatment plant. Indeed, Respondent promised the Briar Chapel residents that its expansion of the plant would be completed by the end of 2021. *See* Attach. 7, § II(c). Respondent applied to the Commission on March 8, 2021, for the same rate increase (to $4,000/REU) that it had requested to fund its plan to build a 1,000,000 GPD sewage system. The expansion to 500,000 GPD was finally completed in October of 2022. *See* Respondent's Late-Filed Exhibit (Nov. 8, 2023), at 1.

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[4] In addition to building a much larger treatment plant, it appears that Respondent also intended to use a discharge permit held by the Fearrington utility company to address irrigation capacity limits. Complainants have reason to believe that Respondent informed the original developer of Briar Chapel that the developer did not need to build additional spray-irrigation fields in Briar Chapel because Fearrington held a discharge permit that would relieve the irrigation constraints that Briar Chapel was facing.

[5] Respondent created an affiliate, ONSWC-Chatham North LLC, to own and operate the combined system. For ease of reading, Complainants refer to both Old North State and ONSWC-Chatham North as "Respondent."

[6] *See, e.g.*, Zachary Horner, *Hotly-Contested Fearrington Village-Briar Chapel Wastewater Transfer at a Standstill*, Chatham News & Record (Feb. 9, 2020), *available at* https://chapelboro.com/town-square/hotly-contested-fearrington-village-briar-chapel-wastewater-transfer-at-a-standstill.

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In the end, Respondent relies on the proximity in time between Complainants' request to join the Briar Chapel system and Respondent's construction of the new system—arguing that the correlation in time proves that Complainants caused the need to expand. But correlation is not evidence of causation. As early as 2018, Respondent had identified the approaching need to expand the system, and Respondent even promised to have the expansion completed by the spring of 2020—a year before Complainants asked to be connected. Should the Commission inquire into the matter, Complainant believe that it will find that the construction of single-family homes forced Respondent to expand the system and Respondent delayed the expansion because of its ambition to build a combined system for Briar Chapel and Fearrington Village.

### C. Complainants question whether all the costs of the expansion were caused by Complainants.

Respondent asserts that it built the force main and SD East pump station for Complainants. *See* Tr. at 119–20 ("It's clear in the record that a lift station, a force main has got to be put in – put in for these people."); *see also id.* at 8. 21, 124, 137. Although Complainants acknowledge their sewage service is dependent on the SD East pump station and force main, Complainants are suspicious that Respondent may have constructed those assets with the ulterior goal of being able to serve Fearrington Village.

The force main and the SD East pump station are ideally positioned to transfer waste from Fearrington Village to the Briar Chapel. In fact, Respondent had plans to use the SD East pump station and the force main to transfer additional waste from Fearrington Village to the Briar Chapel plant. As shown in the image below, there were plans to construct a sewage line—through a 300-foot buffer that separated Briar Chapel from homes

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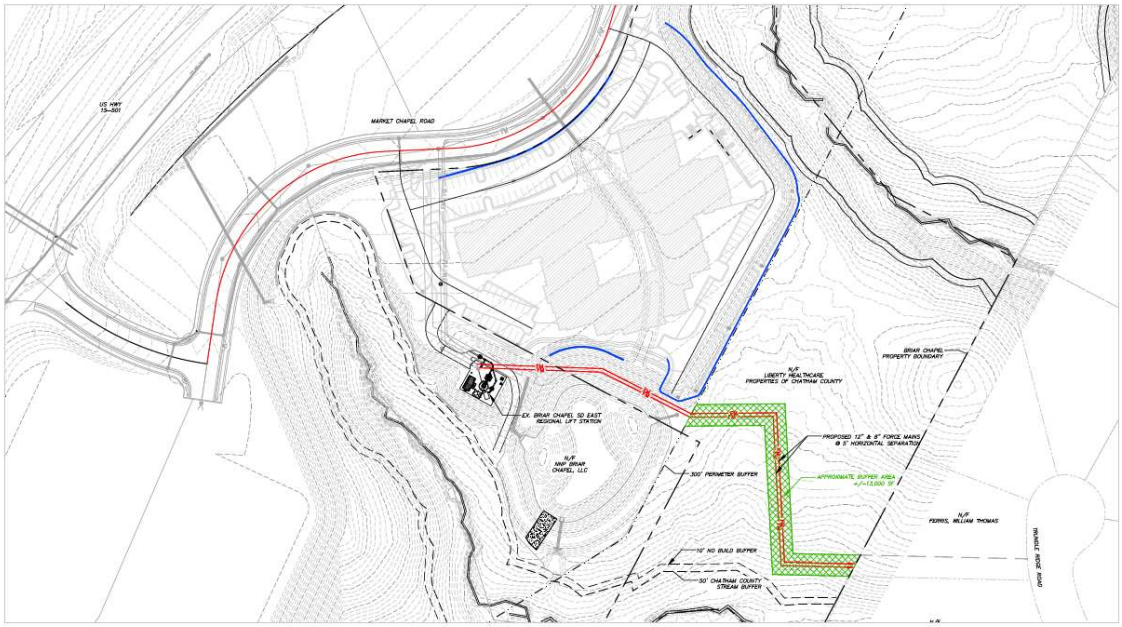
in Fearrington Village—that would connect the SD East pump station to the Fearrington system.

**FEARRINGTON/BRIAR CHAPEL FORCE MAIN INTERCONNECTION**[7]




The costs of the force main and SD East pump station were included in Respondent's application to approve financing for the combined Briar Chapel-Fearrington system. *See* Application, *Approval of Financing of ONSWC-Chatham North, LLC*, Docket No. W-1320, Sub 3 (June 17, 2019), Ex. D ("Interconnect Project Recap"). Notably, Respondent estimated the pump station would need to be 1,250 GPM to handle all of Fearrington's wastewater, *see id.*, and Respondent built a pump station that handles 1,110 GPD (despite not needing to handle any of Fearrington's sewage), Attach. 3, at 15. In addition, it is curious that as part of its agreement with Respondent, the developer of Briar

[7] This drawing was provided by Respondent to Chatham County to support Respondent's request to place a sewage line through the 300-foot buffer. A full resolution copy of the drawing is included as Attachment 8.

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Chapel was generally responsible for paying for the construction of Briar Chapel's sewer infrastructure, Compl., Ex. I, §§ 4–5, except for the force main and SD East pump station, which were expressly identified as Respondent's responsibility, Attach. 1, § 1.1.

In addition, the force main also serves 89 residential homes that were constructed as Phase 14 of the Briar Chapel development. Attachment 9 (Nov. 17, 2020 DEQ Permit Application), at 5. Respondent also modified another pump station to connect to the same force main so that Respondent could abandon another older, leaking force main. Attach. 10 (Sept. 29, 2020 DEQ Permit Application), at 19. Complainants also understand that Respondent's investments in the Briar Chapel treatment plan include upgrades to address residents' complaints about sewage odors. *See* Attachment 11 (Oct. 7, 2022 DEQ Plant Certification); Attach. 12 (Respondent's 2020 Briar Chapel Wastewater Report), at 2.

In the end, Complainants have questions as to whether the entirety of the costs that Respondent seeks to recoup from Complainants were incurred to benefit Complainants. But Complainants do not believe the Commission needs to investigate this matter as part of this proceeding because, as stated above, the financial underpinnings of the connection fee are irrelevant to the dispute at hand.

## III. RESPONDENT PRESENTS THE COMMISSION WITH A FALSE DILEMMA.

In the end, Respondent strenuously argues that the Commission must reject Complainants arguments because this dispute boils down to a simple choice: either side with ratepayers or side with Complainants. Indeed, Respondent asserts that its interests in collecting higher fees are "aligned" with ratepayers; therefore, if the Commissioners side with Respondent, then ratepayers win—but side with Complainants, and ratepayers lose. *See* Tr. at 8–9. Respondent mischaracterizes what is at stake in this dispute.

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First, Complainants' interests are not opposed to ratepayers' interests—they are one in the same. Complainants represent *hundreds* of residential ratepayers. Complainants are not building shopping centers or corporate offices, they are building multi-family residences. Knoll is a 200-unit apartment complex; and Inspire is a 150-unit senior-living community. The residents of Knoll and Inspire will ultimately pay the higher fees that Respondent seeks to collect from Complainants. Although Respondent characterizes Complainants as "commercial users," Respondent's Br. Supp. Mot. to Dismiss at 35, Complainants are no different than all the large homebuilders from which Respondent contently collected the $1,500/REU connection fees prior to April 19, 2021. A resident of Knoll or Inspire, who happens to be a tenant, is no less a residential ratepayer than a resident who purchased a house in Briar Chapel.

Second, Respondent's REU calculation grossly overstates the wastewater usage of these tenants. Using Respondent's preferred REU calculation of 189 GPD, Knoll would account for 270.6 REUs (51,140 GPD divided by 189 GPD) and Inspire would account for 201.85 REUs (38,150 GPD divided by 189 GPD). This REU calculation implies that Knoll, which contains 200 apartments with a total bedroom count of 337, is the equivalent of 270.58 single-family homes with 913 bedrooms (270.58 REUs multiplied by 3.35 bedrooms).[8] Similarly, Inspire, which contains 150 apartments with a total bedroom count of 231, is the equivalent of 201.85 single-family homes with 681 bedrooms (201.85 REUs multiplied by 3.35 bedrooms). Respondent's preferred REU calculation would charge

[8] The average bedroom count for single-family homes in Briar Chapel is 3.35. *See* Attach. 13 (July 9, 2013 Letter to DEQ). Respondent appears to have reached its 189 GPD figure by multiplying the 56 GPD per bedroom approved by DEQ for single-family homes, *see* Compl., Ex. L, to the average bedroom count for single-family homes.

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Complainants' residential tenants for sewage usage that is *three times greater* than their apartments' actual usage (using Respondent's own arithmetic). Respondent's inaccurate REU calculation is not in residential ratepayers' interests, who will be paying inappropriate fees for connection and for future monthly bills.

Third, it is presumptuous for Respondent to claim that it will recoup from homeowners any costs not collected from Complainants' tenants. For Respondent to adjust its rates going forward, Respondent must file a rate case and establish that the rate increases are the result of prudently managing the expansion. *Cf.* Order, *In the Matter of Cardinal Pipeline Co., LLC Depreciation Rate Study As of Dec. 31, 2020 in the Matter of Application of Cardinal Pipeline Co., LLC, for an Adjustment in Its Rates & Charges*, No. G-39, Subs 39, 77 (Oct. 14, 2022) (recognizing utility has "an opportunity to recover its reasonable operating expenses and earn a fair return on its rate base under prudent management"). Complainants have serious questions about whether Respondent made prudent decisions in delaying the expansion, in selecting the assets included in the expansion, and in timing its request to increase rates for the expansion. It seems premature for the Commission to conclude—outside of the context of a rate case—that homeowners will bear the burden of paying for whatever additional costs Respondent had wished to collect from Complainants.

## CONCLUSION

For the reasons stated above, Complainants ask the Commission to disregard Respondent's fact-intensive arguments regarding the purported fairness of allowing Complainants to pay the rates in effect at the time of sale.

Respectfully submitted, this the 29th day of November 2023,

/s/ Craig D. Schauer
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served this day upon all parties of record in this proceeding, or their legal counsel, by electronic mail or by delivery to the United States Post Office, first-class postage pre-paid.

This the 29th day of November, 2023.

By: /s/ Craig D. Schauer
Craig D. Schauer