

SANFORD LAW OFFICE, PLLC
Jo Anne Sanford, Attorney at Law

August 18, 2023

Ms. A. Shonta Dunston, Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4325

Via Electronic Delivery

Re: Carolina Water Service, Inc. of North Carolina and Mountain Air
Utilities Corporation
Docket Nos. W-354, Sub 411 and W-1148, Sub 22
Settlement Agreement and Stipulation

Dear Ms. Dunston:

Carolina Water Service, Inc. of North Carolina (“CWSNC” or “Company”) hereby files a Settlement Agreement and Stipulation in these dockets on behalf of the following parties: CWSNC, Mountain Air Utilities Corporation, the Mountain Air Homeowners Association, Inc., and the Public Staff (Stipulating Parties).

The Stipulating Parties, who are the only formal parties of record to these dockets, have reached a comprehensive settlement of all contested issues in this transfer proceeding. In view of this settlement and the fact that all issues have been resolved to the satisfaction of the Stipulating Parties, the Parties collectively request that, unless the Commission wishes to require the appearance of a specific witness or witnesses, all witnesses be excused from appearing at the evidentiary hearing now scheduled for Tuesday, August 22, 2023, and that the prefiled testimony of those witnesses be copied into the record as if given orally from the witness stand.

I hereby certify that I have today served a copy of this filing on the parties to these proceedings.

As always, we thank you and your staff for your assistance; please feel free to contact me if there are questions or if additional information is required.

Electronically Submitted

/s/Jo Anne Sanford
North Carolina State Bar No. 6831
Attorney for Carolina Water Service, Inc. of
North Carolina

- c: Lucy Edmondson, Chief Counsel, Public Staff
Gina Holt, Manager, Legal Division, Natural Gas, Water, Sewer, Telephone, & Transportation Sections, Public Staff
Elizabeth Culpepper, Staff Attorney, Public Staff
Charles Junis, Director, Water, Sewer & Telephone Division, Public Staff
Lynn Feasel, Financial Manager, Water, Sewer and Telecommunications Section, Public Staff Accounting Division
Daniel C. Higgins, Attorney for Mountain Air Utilities Corporation
Edward S. Finley, Jr., Attorney for Mountain Air Homeowners Association, Inc.

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. W-354, SUB 411
DOCKET NO. W-1148, SUB 22

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application by Carolina Water Service, Inc. of)
North Carolina, 5821 Fairview Road, Suite)
401, Charlotte, North Carolina 28209 and)
Mountain Air Utilities Corporation, Post Office)
Box 1090, Burnsville, North Carolina 28714,)
for Authority to Transfer the Mountain Air)
Water and Wastewater Utility Systems and)
Public Utility Franchise in Yancey County,)
North Carolina, and for Approval of Rates)

**SETTLEMENT
AGREEMENT AND
STIPULATION**

Carolina Water Service, Inc. of North Carolina (CWSNC or Company), through counsel; Mountain Air Utilities Corporation (MAUC), through counsel; the Public Staff – North Carolina Utilities Commission (Public Staff), through its Executive Director, Christopher J. Ayers; and the Mountain Air Homeowners Association, Inc. (MAPOA), through counsel (collectively, the Stipulating Parties), pursuant to N.C. Gen. Stat. § 62-69 and Rule R1-24(c) of the Rules and Regulations of the North Carolina Utilities Commission (Commission), respectfully submit the following Settlement Agreement and Stipulation (Stipulation) for consideration by the Commission in this proceeding. The Stipulating Parties hereby stipulate and agree as follows regarding settlement of the issues in the above-captioned dockets.

BACKGROUND

A. On May 4, 2021, in Docket No. W-1148, Sub 20, the Commission issued an Order Appointing Emergency Operator and Requiring Customer Notice (Emergency Order) appointing CWSNC as emergency operator (EO) of the water and wastewater utility systems serving the Mountain Air Development in Yancey County, North Carolina (Mountain Air Development) effective May 10, 2021. As EO, CWSNC currently serves 483 monthly metered water utility customers, 438 monthly flat rate wastewater utility customers, and 21 monthly metered wastewater utility customers in the Mountain Air Development service area.

B. On July 12, 2022, MAUC and CWSNC entered into a utility asset purchase agreement whereby CWSNC agreed to purchase MAUC's water and wastewater utility systems for \$950,000 (Utility Asset Purchase Agreement).

C. The Utility Asset Purchase Agreement acknowledges the likelihood of title objections relating to outstanding judgment liens encumbering certain parcels of real property where MAUC utility assets are located. MAUC intends to secure releases of the judgment liens as to those parcels at closing, and pay fees and closing costs, by use of the purchase price. In the event MAUC is unsuccessful in obtaining releases of the judgment liens at closing, neither MAUC nor CWSNC will be required to close on the sale and the Utility Asset Purchase Agreement will be considered terminated. Furthermore, as stated in the Emergency Order, Finding of Fact No. 9, "not all the utility system real property was conveyed to the utility MAUC," thus the ownership of important water and wastewater utility system components remains with MAUC's parent or affiliated entities. As a result, and in

order to allow an effective transfer, the Utility Asset Purchase Agreement requires the seller-affiliated entities to convey their respective interests in those parcels to CWSNC at closing, subject to release of the judgment liens encumbering those parcels.

D. On September 26, 2022, CWSNC and MAUC filed with the Commission an Application for Transfer of Public Utility Franchise and for Approval of Rates (Initial Transfer Application) seeking authority to transfer the water and wastewater utility systems and public utility franchise serving the Mountain Air Development from MAUC to CWSNC and for approval of rates. In the Initial Transfer Application, CWSNC requested approval to charge CWSNC Uniform Rates for metered and flat rate residential and nonresidential service for both water and wastewater utility service approved by the Commission in Docket No. W-354, Sub 384.

E. On January 18, 2023, MAPOA filed a Petition to Intervene in this proceeding. The Commission allowed MAPOA to intervene by Order dated February 1, 2023.

F. On May 11, 2023, CWSNC filed certain revisions to the Initial Transfer Application. Specifically, CWSNC amended the Initial Transfer Application to request authorization to charge the Uniform Rates for the base year recently approved in the Company's Docket No. W-354, Sub 400 rate case to Mountain Air Development customers instead of the Sub 384 rates as requested in the Initial Transfer Application (the Initial Transfer Application and amendment thereto are collectively referred to as the Transfer Application).

G. On June 5, 2023, the Commission entered an Order Scheduling Hearings, Establishing Discovery Guidelines, and Requiring Customer Notice (Scheduling Order) in these dockets.

H. On June 16, 2023, MAUC filed the Direct Testimony of William R. Banks, the President of MAUC and Mountain Air Development Corporation, the entity that developed the Mountain Air Development.

I. On June 16, 2023, CWSNC filed the Direct Testimony of Donald H. Denton III. Mr. Denton is Senior Vice President, East Operations for Corix Regulated Utilities (US) Inc. (CRU) and CWSNC's President. CWSNC is a subsidiary of CRU.

J. On July 6, 2023, the Public Staff filed the Direct Testimony of D. Michael Franklin and Lynn Feasel. Mr. Franklin is a Public Utilities Engineer with the Water, Sewer, and Telephone Division of the Public Staff and Ms. Feasel is the Public Utility Regulatory Analyst Supervisor of the Water, Sewer, and Telecommunications Sections with the Accounting Division of the Public Staff.

K. On July 11, 2023, the Public Staff filed a motion requesting that the public witness hearing scheduled for July 17, 2023, be canceled. No customers had filed consumer statements in these dockets, and the Public Staff had not received any consumer statements. CWSNC and MAUC supported the motion and counsel for MAPOA had not responded to the Public Staff at the time of the filing of the motion. By Order dated July 11, 2023, the Commission canceled the public witness hearing and required notice to be given of that cancellation.

L. On July 26, 2023, CWSNC filed the Rebuttal Testimony of Matthew P. Schellinger II, the Regional Director of Financial Planning and Analysis, East Region for the Corix Group of Companies. In this capacity, Mr. Schellinger oversees financial planning and analysis for CWSNC. On July 28, 2023, CWSNC filed the Rebuttal Testimony of Company witness Denton and MAUC filed the Rebuttal Testimony of its witness Banks.

M. On July 26, 2023, MAPOA filed a motion requesting leave to file the Direct Testimony of John Robertson, the MAPOA Board member primarily responsible for water and wastewater issues coming before the Board. The Commission issued an Order on July 27, 2023, granting MAPOA's motion and accepting the Robertson direct testimony. Neither CWSNC nor MAUC filed Rebuttal Testimony to MAPOA witness Robertson.

N. After the filing of all direct and rebuttal testimony and prior to the evidentiary hearing, the Stipulating Parties engaged in settlement negotiations over a period of several days.

O. After settlement negotiations, in which concessions from their respective litigation positions were made by each of the Stipulating Parties, the Stipulating Parties were ultimately able to arrive at a joint settlement proposal addressing all the issues in dispute, the terms of which are reflected in the following sections of this Stipulation and the schedules attached to the settlement testimony of CWSNC witness Matthew Schellinger. The Stipulation is further supported by the joint settlement testimony of Public Staff witnesses Lynn Feasel and D. Michael Franklin. The Stipulating Parties agree and stipulate as follows:

STIPULATED PROVISIONS

The Stipulating Parties agree that the Transfer Application filed by CWSNC and MAUC in these dockets should be approved by the Commission and that CWSNC should be granted a Certificate of Public Convenience and Necessity to provide water and wastewater utility service to customers in the Mountain Air Development service area (See Exhibit A to the Utility Asset Purchase Agreement), subject to the following terms and conditions:

1. Upon Commission approval of an increase to the provisional EO rates, CWSNC should be authorized to implement its Sub 400 base year rates for water and wastewater utility service to Mountain Air Development customers. The Sub 400 base year rates for a 5/8" water meter are as follows:

<u>Monthly Metered Water Rates:</u>	
Base Charge	\$25.91
Usage Charge, per 1,000 gallons	\$12.28
<u>Monthly Flat Rate for Residential Wastewater Service:</u>	\$87.27 ¹
<u>Monthly Flat Rate for Commercial Wastewater Service:</u>	\$87.27 ²

After closing, the provisional rates should be authorized on an interim basis until the next rate case.

¹ Per single family equivalent (SFE) or residential equivalent unit (REU).

² Per single family equivalent (SFE) or residential equivalent unit (REU).

2. The monthly flat rate per-equivalent residential connection (ERC) surcharge shall be designed to collect the following stipulated cost of service components:

a. Creation of a regulatory asset labeled “Lien Release” in the amount of \$950,000, levelized for cost recovery over 40 years starting in the month recovery is implemented, including a return at the Sub 400 pre-tax weighted cost of capital (8.69%), with the return being subject to adjustment in a future general rate case. The stipulated monthly per-ERC Lien Release Water Surcharge will be \$9.06 and the monthly per-ERC Lien Release Wastewater Surcharge will be \$4.92.

b. Creation of a Due Diligence and Transaction Costs Asset, limited to the amount of \$75,000, amortized for cost recovery over 40 years in the “Organizational Account” starting in the month recovery is implemented, including a return at the Company’s Sub 400 pretax weighted cost of capital (8.69%), with the return being subject to adjustment in a future general rate case. The stipulated monthly per-ERC Due Diligence and Transaction Costs Water Surcharge will be \$0.89 and the monthly per-ERC Due Diligence and Transaction Costs Wastewater Surcharge will be \$0.48.

c. Creation of an Unrecovered Operating Reserve (incurred as EO, estimated through release of EO, and reported in Docket No. W-1148, Sub 20), levelized for cost recovery over five years, including a return at the Company’s Sub 400 pre-tax cost of debt (4.65%), with the return being

subject to adjustment in a future general rate case. The stipulated monthly per-ERC Unrecovered Operating Reserve Water Surcharge is estimated to be \$5.38 and the monthly per-ERC Unrecovered Operating Reserve Wastewater Surcharge is estimated to be \$7.07.

d. The three monthly per-ERC surcharges set forth in subparagraphs a-c above are currently estimated to total \$15.33 for each water system ERC and \$12.47 for each wastewater ERC and will be finally determined following CWSNC filing a final accounting post-closing to reconcile the operating reserve, review and recommendation by the Public Staff, notice to customers, and Commission approval.

3. CWSNC also projects that, subsequent to receipt of a Commission Order approving the transfer, significant additional due diligence and investigation will be necessary, particularly with respect to title and lien issues, prior to the time that the Company and MAUC will be able to close the transfer. Thus, until the closing of the sale has taken place, CWSNC, by necessity, will need to continue to serve as EO of the water and wastewater utility systems serving the Mountain Air Development. The most recent Emergency Operator Quarterly Report filed by CWSNC in Docket No. W-1148, Sub 20 on July 31, 2023, indicates that since the inception of the Company's appointment as EO on May 10, 2021, and extending through June 30, 2023, CWSNC has incurred operating revenue deficits totaling \$338,115.59. On August 16, 2023, CWSNC corrected the operating revenue deficits to be \$317,312.

4. Upon Commission approval authorizing CWSNC to implement the proposed rates discussed in Paragraphs 1 and 2 above, the average water bill for a Mountain Air Development customer using 2,520 gallons per month will be \$72.19 per month and flat rate wastewater bills for residential customers will total \$99.74 per month.

5. Upon Commission approval authorizing CWSNC to implement the proposed rates discussed in Paragraph 1 above, the Company will withdraw the bulk wastewater pass-through rate increase request now pending in Docket No. W-1148, Sub 24.

6. CWSNC accepts and agrees to use the depreciation rates proposed by Public Staff witness Franklin on capital investments made by CWSNC while acting as the EO, and the Stipulating Parties agree that CWSNC will use the Company's Uniform Water and Sewer depreciation rates on all future capital investments applicable to the Mountain Air Development water and wastewater systems.

7. The Stipulating Parties agree that they, singularly or collectively, may propose in the next general rate case filed by CWSNC that the Mountain Air Development water and sewer systems and the rates agreed to herein, including the agreed-upon flat, metered, and surcharge components, should be consolidated into the Company's Uniform Water and Wastewater Rate Divisions provided that it is demonstrated that CWSNC's Uniform Rate Division customers are not adversely impacted and Mountain Air Development customers are not materially impacted.

8. The Stipulating Parties agree that CWSNC will file a final accounting to reconcile the operating balance as EO, net of \$30,000 in bond funds, within 60 days of closing. In addition, CWSNC will file to establish the surcharges to recover the Lien Release regulatory asset, Due Diligence and Transaction Costs asset, and Unrecovered Operating Reserve within 60 days of closing. Further, CWSNC will notice the Mountain Air Development of the proposed surcharges, to be effective no sooner than 60 days after filing the request, described in Paragraph 2 above as part of the EO true-up and transfer proceeding.

AGREEMENT TO SUPPORT SETTLEMENT; NON-WAIVER

A. The Stipulating Parties will act in good faith to support the reasonableness of this Stipulation in any hearing before the Commission and any proposed order or brief in these dockets. The Stipulating Parties further agree that this Stipulation is in the public interest because it reflects a give-and-take settlement of contested issues.

B. The provisions of this Stipulation do not reflect any position asserted by any of the Stipulating Parties but reflect instead the compromise and settlement between the Stipulating Parties as to all the issues covered hereby. No Stipulating Party waives any right to assert any position in any future proceeding or docket before this or any other Commission and in any court except insofar as the Commission is addressing litigation arising out of the implementation of the terms herein or the approval of this Stipulation. This Stipulation shall not be cited as precedent by any of the Stipulating Parties regarding any issue in any other proceeding or docket before this Commission or in any court.

C. This Stipulation is a product of negotiation between the Stipulating Parties, and no provision of this Stipulation shall be strictly construed in favor of or against any Party.

INTRODUCTION OF TESTIMONY AND WAIVER OF CROSS-EXAMINATION

The prefiled testimony and exhibits of the Stipulating Parties may be received in evidence without objection, and each Party waives all right to cross examine any witness with respect to such pre-filed testimony and exhibits. If, however, questions are asked by any Commissioner, or if questions are asked or positions are taken by any person who is not a Stipulating Party, then any Stipulating Party may respond to such questions by presenting testimony or exhibits and cross-examining any witness with respect to such testimony and exhibits, provided, however, that such testimony, exhibits, or cross-examination shall not be inconsistent with this Stipulation. The Stipulating Parties further agree that all supplemental testimony filed in support of the Stipulation shall not be inconsistent with this Stipulation.

STIPULATION BINDING ONLY IF ACCEPTED IN ITS ENTIRETY

This Stipulation is the product of negotiation and compromise of a complex set of issues, and no portion of this Stipulation is or will be binding on any of the Stipulating Parties unless the entire Joint Settlement Agreement and Stipulation is accepted by the Commission. If the Commission rejects any part of this Stipulation or approves this Stipulation subject to any change or condition, or if the Commission's approval of this Stipulation is rejected or conditioned by a reviewing court, the Stipulating Parties agree to meet and discuss the applicable Commission

or court order within five business days of its issuance and to attempt in good faith to determine if they are willing to modify the Stipulation consistent with the order. No Stipulating Party shall withdraw from the Stipulation prior to complying with the foregoing sentence. If any Stipulating Party withdraws from the Stipulation, each Stipulating Party retains the right to seek additional procedures before the Commission, including cross-examination of witnesses, with respect to issues addressed by the Stipulation and shall not be bound or prejudiced by the terms and conditions of the Stipulation.

COUNTERPARTS

This Stipulation may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute the same instrument. Execution by facsimile signature shall be deemed to be, and shall have the same effect as, execution by original signature.

The foregoing is agreed and stipulated to this the 18th day of August 2023.

Electronically Submitted
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Mountain Air Utilities Corporation

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Mountain Air Homeowners Association, Inc.

By: /s/ Edward S. Finley, Jr.

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2024 White Oak Rd.

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CERTIFICATE OF SERVICE

It is hereby certified that the foregoing Agreement and Stipulation filed on behalf of Carolina Water Service, Inc. of North Carolina, the Public Staff – North Carolina Utilities Commission, the Mountain Air Utilities Corporation, and the Mountain Air Homeowners Association, Inc. has been this day served upon each of the parties and counsel of record in this proceeding by e-mail / electronic transmission or by deposit of same in the U.S. Mail, postage prepaid.

This the 18th day of August, 2023.

/s/ Jo Anne Sanford
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