

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. W-1333, SUB 0
DOCKET NO. W-1130, SUB 11

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application by Currituck Water and Sewer,) CURRITUCK WATER & SEWER
LLC, 4700 Homewood Court, Suite 108,) RESPONSE TO PUBLIC
Raleigh, North Carolina 27609, and) STAFF'S POINTS OF
Sandler Utilities at Mill Run, LLC, 448) DISAGREEMENT
Viking Drive, Suite 220, Virginia Beach,)
Virginia 23452, for Authority to Transfer the)
Sandler Utilities at Mill Run Wastewater)
System and Public Utility Franchise in)
Currituck County, North Carolina, and for)
Approval of Rates)
)

NOW COMES Currituck Water and Sewer LLC ("CWS") and responds to the Public Staff's Points of Disagreement with Currituck's Witness List Filing Dated May 2, 2022 dated May 4, 2022.

The Public Staff seeks for the first time in its May 4, 2022 pleading to be permitted to present witnesses Franklin, May, and Tankard as a three member panel. CWS objects.

In paragraph 6 of the Public Staff's Points of Disagreements the Public Staff states, "Council for Currituck had not informed the Public Staff that it objected to the Public Staff's proposal, and the Public Staff was first made aware of Currituck's objection after Currituck's attorney made the filing with the Commission on May 2 , 2022." This allegation is beside the point and is completely misleading.

On April 27, 2022, the undersigned counsel for Currituck emailed counsel for the Public Staff and for Sandler stating, "By NCUC order council for CWS is required to provide the Commission with a list of witnesses, the order of witnesses and an estimated length of cross." This email suggested the general order of witnesses and requested estimates of the length of cross. Sandler expeditiously responded. On Friday April 29, 2022, the undersigned counsel for CWS, having failed to hear from the Public Staff, sent another email stating, "My understanding is that the list is due to the Commission Monday. I have heard from Sandler. Would you please designate the order of the Public Staff witnesses and estimated length of cross."

At 1:22 pm counsel for the Public Staff emailed, "We are discussing and I will be back to you today."

Finally, on Friday April 29 at 5:29 pm the Public Staff emailed its list. For the first time the Public Staff, without explanation, listed witnesses Tankard and May of the Division of Water Resources and witness Franklin of the Public Staff as "**panel.**" When the Public Staff submitted its prefiled direct testimony on March 2, 2022, it submitted the testimony of witnesses Tankard and May as a panel. The Public Staff did not submit the testimony witness Franklin as being part of any panel.

The undersigned counsel for CWS was required due to the delay in the Public Staff response to compile the designation for the Commission over the weekend and filed it on or about 10 o'clock am on Monday May 2. Although not required to indicate its objection to a notification by the Public Staff to designate the three witnesses as a panel, council for CWS did so. Such designation was required in order for council for CWS to accurately present to the Commission its estimated cross examination predicted length. CWS based its projected length of cross examination on the fact that as Mr. Franklin was not listed as part of any panel, he would testify on his own behalf.

The Public Staff for the first time on May 4, 2022 moved that the three witnesses be permitted by the Commission to appear as a panel. The burden at the stage of witness list

designation stage did not rest with CWS to support an objection to a motion that had not yet been made.

On Monday May 2 the Public Staff emailed counsel for CWS: "I just saw the filing and noticed you objected to the Public Staff intention to call DWR witnesses and Mike Franklin as a panel. They are engineers and their testimonies contain similar information. Mr. Tanker and Mr. May have to drive a distance to attend the hearing, and in the interest of overall time efficiency it makes sense to call them as a panel. Please provide the basis for your objection."

The undersigned counsel responded: "The testimonies have many differences. Franklin is a primary witness for the Public Staff, and from CWS's perspective should be required to be crossed with this testimony alone. My intent is to ask the witnesses to provide the specific statements in their testimony without another witness chiming in. No objection to the two DWR witnesses appearing as a panel as we have had advance notice of that. As far as distance traveled, the many CWS witnesses have this to address. Also, put the DWR witnesses on first, and they can be excused. Otherwise they will be on the stand much longer and their return will be delayed. From my experience there is no rule that the sponsoring party is free to join witnesses on panels at that party's sole pleasure. Ultimately the decision is up to the Commission, and CWS does not agree to a panel of the three."

In addition to the selective and limited description of the testimony of the three witnesses, the Public Staff fails to relate that the Public Staff in its testimony places extraordinary stress on the history of the Eagle Creek system leading up to the catastrophic failure beginning in September 2020. Rather than assisting the Commission in constructive recommendations on the ultimate issue of the requested transfer, the Public Staff seems inordinately focused on placing blame. In its testimony the Public Staff through innuendo and incomplete allegations seeks to place the blame for the catastrophic failure on Envirolink. Envirolink is not a party to this proceeding and played no role at Eagle Creek before September 2020. The testimony of witnesses Tankard, May and Franklin contains many factual allegations on which CWS intends to focus much of its cross examination. If there is some question on this

topic, reference is made to the CWS rebuttal. This case is somewhat distinctive in that rather than primarily addressing policy, much of the testimony contains factual allegations.

Cross-examining council by longstanding Commission practice should be free to ask witnesses about the specific allegations, specifically factual ones, in the witness's testimony without having some other witness appearing as a panel and propping up the faltering witness if the witness is unable to support its testimony. That role should be left to sponsoring council on redirect.

Even if witnesses are presented as a panel, cross-examining counsel should be permitted to designate particular questions to a particular panel member and not be limited to asking "toss up" questions free for any panel witness to respond without being asked.

Moreover, contrary to the Public Staff allegations in paragraph 8 of its pleading, the prefiled testimony of Mr. Franklin addresses many topics dissimilar from those addressed by witnesses Tankard and May. Mr. Franklin addresses rate base, disallowance of certain costs, required bond. Mr. Franklin addresses the Commission's 2015 rate order for Sandler, the extent to which provisions of the Superior Court consent judgment should be assessed in the context of the Public Staff's ultimate recommendation to the Commission on the proposed transfer application. Mr. Franklin addresses the relationship between Envirolink and Currituck. He addresses his inspection of the Town of Oak Island system. He addresses present and requested rates. He addresses purchase price. Mr. Franklin presents the ultimate recommendations of the Public Staff. Obviously, DWR witnesses Tankard and May, employees of a completely different state agency, cannot address and have not addressed these topics.

In paragraph 10 of its pleading the Public Staff lists a number of dockets in which it states that witnesses were allowed to testify as a panel but did not file joint testimony with any other witness. In the time allowed for this response CWS has not researched the allegations with respect to each of these dockets. However, Public Staff fails to indicate whether in any of these dockets parties against whom the witnesses in the panels testified objected to the

testimony being presented through a panel or the extent to which the panels addressed issues still in dispute or the extent to which the issues to which the testimony was addressed had been placed in a different context between the filing of the testimony and the date of the hearing. In any event, each case is different, and the facts of this case, as indicated above, are such that presenting witnesses Franklin, May, and Tankard as a panel is inappropriate.

WHEREFORE Currituck Water and Sewer Company respectfully requests that the Public Staff's request to present the three witnesses as a panel be denied.

Respectfully submitted this 9 day of May 2022.

Edward S. Finley, Jr.
/s/ Edward S. Finley, Jr.
Edward S. Finley, Jr. PLLC
Attorney for Currituck Water and Sewer LLC.

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Motion for Continuance was duly served upon parties of record by either depositing same in a depository of the United States Postal Service, first-class postage prepaid, or by electronic delivery.

This 9th day of May 2022

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