

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. W-1300, SUB 77  
DOCKET NO. W-1305, SUB 35

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

|  |   |                           |
|--|---|---------------------------|
| In the Matter of                       | ) |                           |
| WLI Investments, LLC, 60 Gregory Road, | ) |                           |
| Ste 1, Belville, North Carolina 28451, | ) |                           |
| Complainant                            | ) |                           |
|  | ) |                           |
| v.                                     | ) | ORDER ON WLI INVESTMENTS, |
|  | ) | LLC'S MOTION TO COMPEL    |
| Old North State Water Company, LLC and | ) |                           |
| Pluris Hampstead, LLC,                 | ) |                           |
| Defendants                             | ) |                           |
|  | ) |                           |

BY THE HEARING EXAMINER: On January 3, 2022, WLI Investments, LLC (WLI), filed a Verified Complaint and Petition for Declaratory Ruling (Complaint), in the above-captioned dockets against Old North State Water Company, LLC (ONSWC), and Pluris Hampstead, LLC (Pluris). In summary, WLI alleged that it has a contract (Development Agreement), with ONSWC for WLI to build and transfer to ONSWC a wastewater collection system by which ONSWC will provide wastewater treatment service to 308 single family residential units in Salter's Haven at Lea Marina Subdivision (SHLM), in Pender County, North Carolina, and to an additional 30 lots to be developed by WLI in the Lea Tract adjacent to but outside of SHLM.

Further, WLI summarized the Joint Application filed on October 9, 2020, in Docket Nos. W-1300, Sub 69 and W-1305, Sub 29 (Transfer Dockets), by ONSWC and Pluris requesting Commission approval for a transfer of the utility franchises and approval of rates for three residential developments located in Pender County from ONSWC to Pluris, with one of the developments expressly identified in the Joint Application being SHLM. WLI alleged that ONSWC has breached the Development Agreement and that Pluris has violated the Public Utilities Act (Act), with regard to ONSWC's obligations under the Development Agreement. WLI attached a copy of the Development Agreement to its Complaint as Exhibit A. In conclusion, WLI requested that the Commission issue a declaratory ruling that ONSWC has certain obligations to WLI under the Development Agreement and that Pluris should be required to pay fines for alleged violations of the Act.

On January 18, 2022, ONSWC and Pluris (Defendants), filed a joint Response to Complaint. On February 1, 2022, WLI filed a Reply.

On August 22, 2022, the Hearing Examiner issued a Scheduling Order that, among other things, set this docket for hearing on December 6, 2022, and set the dates for the

parties to prefile testimony. In addition, the Scheduling Order stated that the parties should conduct timely discovery in a formal or informal manner, as they deemed appropriate, and that the Hearing Examiner would be available to resolve any discovery issues that remain after the parties have made reasonable efforts to do so.

On August 29, 2022, WLI filed a Motion to Compel discovery. In summary, the motion stated that on August 23, 2022, WLI served Defendants with WLI's Data Request No. 1 that included, among others, the following three requests for documents:

2. Please provide copies of all documents in your possession that reference "Salters Haven," "Salter's Haven," or "Salters' Haven."
3. Please provide copies of documents that reference the purchase and transfer of utility franchise presently held by ONSWC for service to Majestic Oaks, Majestic Oaks West, Southside Commons (f/k/a Grey Bull), and Salters Haven, approval of which is presently pending before the Commission.
8. Please provide copies of any executed contracts between Pluris and any real estate developer that contain the phrase "grinder pumps."

WLI further stated that on August 24, 2022, ONSWC served WLI with its objection to Data Request Questions (DRQ) Nos. 1 and 2, and that on August 25, 2022, Pluris served WLI with its objections to DRQ Nos. 2, 3, and 8. WLI attached a copy of each of the Defendants' objections to its motion, discussed the nature of the objections, asserted that the objections are unfounded, and requested that the Commission order Defendants to produce the documents sought by WLI.

On September 1, 2022, Defendants filed their response to WLI's Motion to Compel.

### **Discussion**

The Hearing Examiner has read and fully considered the contentions of the parties. As the parties acknowledge, the Commission generally follows the North Carolina Rules of Civil Procedure in matters involving pretrial discovery. Pursuant to Rule 26(b)(1) the Rules of Civil Procedure state, in pertinent part:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party . . . . It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence nor is it grounds for objection that the examining party has knowledge of the information as to which discovery is sought.

In summary, WLI's Complaint includes claims that Pluris violated the Act by exerting operational control over ONSWC; that Pluris has acted in a discriminatory manner by

refusing to accept the grinder pumps and low-pressure facilities (LPF) that WLI alleges are authorized under the Development Agreement; and that Defendants have unjustly and unreasonably coordinated their actions, resulting in their refusal to accept WLI's performance under the Development Agreement. For ease of reference, these claims will be referred to herein as interference with contract claims.

### **Relevant Information**

Pursuant to Rule 401 of the North Carolina Rules of Evidence, "relevant evidence" is defined as

[e]vidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

N.C. Gen. Stat. § 8C-1, Rule 401.

In its motion, WLI stated that it has reason to believe that Defendants exchanged communications, documents, and other materials as part of their negotiations that resulted in the franchise transfer agreement for which Defendants have sought Commission approval in the Transfer Dockets. In response, Defendants contended that WLI's DRQ Nos. 2, 3, and 8 seek information not relevant to WLI's claims and that is not likely to lead to relevant information. Defendants asserted that:

Consequently, the only records that could be reasonably calculated to lead to admissible evidence would [be] the 2018 Agreement and any modifications in writing, duly signed by WLI and ONSWC.

. . .

Efforts to compel production of extraneous documents outside the Agreement in an attempt to contravene the terms of the 2018 Agreement or otherwise establish contractual obligations beyond what is stated in that Agreement are not reasonably calculated to lead to admissible evidence.

Defendants' Response at 5.

Defendants' understanding of the allegations of the Complaint and their corresponding application of Rule 26 is too narrow. WLI's interference with contract claims are largely predicated on Pluris' admitted aversion to LPF. *Id.* at 9. WLI claims that this aversion motivated Pluris, in its negotiations with ONSWC, to reject the LPF that WLI contends is authorized under the Development Agreement. The Hearing Examiner concludes that it is reasonably possible that Defendants' written communications surrounding the transfer agreement and Transfer Dockets included some discussion of the use of LPF for wastewater service at SHLM and the Lea Tract or some discussion of Pluris' aversion to accepting LPF, even though, according to WLI, Pluris has allegedly accepted LPF from other developers. That information could be, or could lead to, evidence that has a

“tendency to make the existence of any fact” showing interference of contract by Pluris more probable. This would be a fact or facts that are relevant to WLI’s claims.

Defendants also maintain that WLI’s DRQs seek extraneous documents outside the Development Agreement in an attempt by WLI to contravene the Development Agreement. According to Defendants, such documents will be inadmissible. Defendants may be correct, but it is premature at this stage of the proceedings to judge whether documents that are extrinsic to the Development Agreement will be inadmissible evidence. In addition, as noted above, Rule 26 allows discovery of information that “appears reasonably calculated to lead to the discovery of admissible evidence.” The Hearing Examiner determines that the documents sought by WLI meet this test.

### **Unduly Burdensome Information**

Defendants contend that production of the documents requested by WLI would be unduly burdensome because it “would entail review of every written record, paper and electronic, maintained by both Respondents, to determine if one of the specified words were present.” *Id.* at 6. The Hearing Examiner finds this objection unavailing. The targeted words in each of DRQ Nos. 2, 3 and 8 provide reasonable boundaries for the document searches required. Further, with today’s technology for electronically producing, storing, and searching documents, it is not unduly burdensome to require Defendants to make a reasonable search of their records in order to provide copies of the documents containing the targeted words. Moreover, to the extent that some of Defendants’ relevant records might be found only in paper versions, Defendants will not need to search “every written record” in order to make a good faith and reasonable search for the documents requested by WLI. For example, Salter’s Haven is a subdivision in Pender County. It is reasonable to expect that Defendants have some system or indicators that will enable them to identify paper documents that could reasonably be anticipated to reference the Salter’s Haven subdivision in Pender County. Similarly, it is reasonable to expect that Pluris has some system or indicators that will enable it to identify paper contracts with developers that could reasonably be anticipated to reference “grinder pumps.”

Defendants also protest that WLI can obtain the documents by searching the Commission’s website. However, this is not an acceptable objection to a request for production of documents. Similar to the admonition in Rule 26 that it is not grounds for objection “that the examining party has knowledge of the information as to which discovery is sought,” it is not grounds for objection that the documents might be obtained elsewhere. Copying documents from the Commission’s website does not provide the same level of authentication as having the party that authored or possesses the documents produce them in discovery, nor is it the same as ensuring that such party made a reasonable search and produced all such documents.

## Privileged Information

Finally, with respect to Defendants' contention that some of the information in the documents sought by WLI is privileged, under Rule 26(b)(5)a:

When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must (i) expressly make the claim and (ii) describe the nature of the documents, communications, or tangible things not produced or disclosed, and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.

Defendants stated a general objection based on attorney-client privilege. *Id.* at 6. The Hearing Examiner concludes that such general objection is not sufficient under the rule.

## Conclusion

Based on the forgoing and the record, the Hearing Examiner concludes that there is good cause to grant WLI's Motion to Compel Defendants to produce the documents requested in WLI's DRQ Nos. 2, 3, and 8. Further, to the extent that Defendants, or either of them, claim that some of the information requested is privileged, Defendants should redact that information and include a footnote for each such redaction that describes the nature of the information redacted with enough specificity to enable the Hearing Examiner and WLI to assess the claim of privilege.

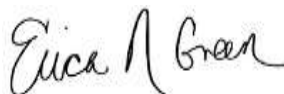
IT IS, THEREFORE, ORDERED as follows:

1. That WLI's Motion to Compel shall be, and is hereby, granted;
2. That on or before Friday, September 9, 2022, Defendants shall serve WLI with copies of the documents requested in WLI's DRQ Nos. 2, 3, and 8; and
3. That to the extent that Defendants, or either of them, claim that some of the information requested by WLI is privileged, Defendants shall redact that information and include a footnote for each such redaction that describes the nature of the information redacted with enough specificity to enable the Hearing Examiner and WLI to assess the claim of privilege.

ISSUED BY ORDER OF THE COMMISSION.

This the 2nd day of September, 2022.

NORTH CAROLINA UTILITIES COMMISSION



Erica N. Green, Deputy Clerk