

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

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

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)

**DIRECT TESTIMONY OF
RANDY BANKS ON BEHALF
OF MOUNTAIN AIR
UTILITIES CORPORATION**

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. William R. Banks; my business address is 311 Clubhouse Drive, PO Box 1037
3 Burnsville, NC 28714

4 **Q. HOW ARE YOU EMPLOYED?**

5 A. President of Mountain Air Development Corporation and Mountain Air Utilities
6 Corporation

7 **Q. PLEASE SUMMARIZE YOUR EDUCATIONAL AND PROFESSIONAL
8 EXPERIENCE.**

9 A. My professional experience is summarized in the attached Exhibit WRB 1.

10 **Q. PLEASE DESCRIBE THE MOUNTAIN AIR DEVELOPMENT.**

11 A. Mountain Air currently consists of 228 homes, 210 condos, a golf course, an air
12 strip, club facilities, etc.

13 Mountain Air is planned and approved to include up to 850 residential units.

14 **Q. WHO WAS THE DEVELOPER OF MOUNTAIN AIR?**

15 A. Mountain Air Development Corporation.

1 **Q. WHAT IS YOUR ROLE WITH MOUNTAIN AIR DEVELOPMENT**
2 **CORPORATION (MADC)?**

3 A. President/CEO

4 **Q. WHEN WAS MADC FORMED?**

5 A. MADC is a North Carolina corporation and it was incorporated on June 17, 1985,
6 under the name NETCO, Inc. In 1990 the name was changed to Mountain Air
7 Development Corporation.

8 **Q. WHEN DID THE DEVELOPMENT OF THE MOUNTAIN AIR RESORT**
9 **START?**

10 A. Initial construction work began in 1985.

11 **Q. HOW WAS THE LAND ACQUISITION AND DEVELOPMENT WORK**
12 **FINANCED?**

13 A. A combination of equity contributions and multiple development and construction
14 loans for various banks.

15 **Q. DID MADC PLEDGE UTILITY ASSETS IN ORDER TO SECURE**
16 **DEVELOPMENT LOANS?**

17 A. No utility assets were pledged to secure development loans. However, the
18 property upon which utility assets are located became encumbered as a result of
19 judgment liens resulting from judgments entered in court cases as a result of
20 either bank loan defaults by MADC, or post-foreclosure deficiency judgments
21 against MADC.

22 **Q. WHAT IS THE ROLE OF MOUNTAIN AIR UTILITIES CORPORATION**
23 **(MAUC) AT MOUNTAIN AIR?**

24 A. Up until May 4, 2021, when the Commission appointed Carolina Water Service
25 (CWS) as Emergency Operator of the MAUC water and sewer systems, those

1 systems were operated by MAUC and it provided water and sewer service in the
2 Mountain Air community.

3 **Q. WHEN WAS MAUC FORMED?**

4 A. MAUC is a North Carolina corporation, and it was incorporated on June 8, 2000.

5 **Q. WHAT IS YOUR ROLE WITH MAUC?**

6 A. President

7 **Q. WHEN WAS MAUC CERTIFICATED BY THE COMMISSION?**

8 A. The Commission issued a Certificate of Public Convenience and Necessity to
9 MAUC in Docket No. W-1148, Sub 0, in May 2001.

10 **Q. HAVE MAUC'S RATES BEEN INCREASED SINCE ITS RATES WERE
11 INITIALLY SET IN 2001?**

12 A. No. Other than being allowed to pass through the Town of Burnsville's annual rate
13 increases for bulk sewer service provided to MAUC by Burnsville, MAUC's rates
14 have not been increased since they were initially set in 2001.

15 **Q. DESCRIBE MAUC'S UTILITY SYSTEMS.**

16 A. MAUC's water system consists of wells, well houses, pumps and pump houses,
17 storage tanks, distribution mains, and distribution lines. The sewer system consists
18 of collection lines and mains, lift stations and grinder pumps. All wastewater flow
19 is pumped to the Town of Burnsville which provides bulk sewer wastewater
20 treatment service for Mountain Air.

21 **Q. FOR HOW LONG HAVE YOU BEEN ATTEMPTING TO SELL THE
22 MAUC SYSTEMS TO A LARGE PROFESSIONAL UTILITY
23 OPERATOR?**

24 A. We had initial discussions regarding the potential purchase of the MAUC systems
25 with Aqua North Carolina in 2015 or 2016. During the time those discussions were

1 occurring our counsel was contacted by CWS's Martin Lashua who advised that if
2 the discussions with Aqua did not pan out that CWS would be interested in
3 acquiring the MAUC systems. We subsequently had serious discussions with CWS
4 and in the summer of 2017 representatives of CWS, MAUC and the Board of the
5 Mountain Air Property Owners Association ("POA") met with Public Staff. That
6 meeting resulted in agreement amount all participants, including Public Staff, to
7 support approval of an acquisition adjustment in the amount of the purchase price
8 to be paid by CWS. Thereafter we negotiated the terms of an Asset Purchase
9 Agreement for these systems with CWS. Before that agreement was executed a
10 change in senior management/leadership or philosophy at CWS to the effect that it
11 was no longer interested in acquiring additional systems in North Carolina brought
12 that effort to an end. In June of 2020 MAUC entered into a Purchase and Sale
13 Agreement with Red Bird Utility Operating Company, LLC for the sale of MAUC's
14 utility systems. An Application for Approval of the Transfer of the System with that
15 prospective purchaser was filed in Docket No. W-1148, Sub 19. The Mountain Air
16 POA did not support that transaction and when Public Staff did not move that
17 transfer application forward we eventually terminated that agreement. That transfer
18 application was withdrawn on October 12, 2021.

19 **Q. HOW DID CWS COME TO BE THE EMERGENCY OPERATOR?**

20 A. In March of 2021 I contacted Bill Grantmyre with the Public Staff and requested
21 that the Commission appoint an emergency operator for the MAUC systems. I had
22 tried to financially hang on and keep the systems operational while awaiting
23 approval of the transfer of the systems to Red Bird. During the period of delay in

1 getting that transfer even in front of the Commission, the remaining financial
2 resources of MADC and MAUC were exhausted.

3 Mr. Grantmyre instructed me to email a request for appointment of an emergency
4 operator to the Commission, which I did on April 5, 2021. Later in April the Public
5 Staff petitioned the Commission to appoint Carolina Water Service, Inc., of North
6 Carolina (CWS) as Emergency Operator and on May 4, 2021, the Commission
7 appointed CWS as the emergency operator in Docket W-1148, Sub 20. I have not
8 been involved in the operation of these systems since approximately June 1, 2021.

9 **Q. DID MAUC ENTER INTO AN ASSET PURCHASE AGREEMENT WITH**
10 **CWS?**

11 A. Yes, we entered into a Utility Asset Purchase Agreement (APA) with CWS dated
12 July 12, 2022. I would note that the purchase price provided for in that APA is the
13 same purchase price which CWS agreed to pay in 2017 and as to which the Public
14 Staff agreed to support approval of an acquisition adjustment in the amount of the
15 purchase price.

16 **Q. WHAT FACTORS DETERMINED THE PURCHASE PRICE FOR THE**
17 **MAUC SYSTEMS?**

18 A. The short answer is that the purchase price is calculated to cover the cost of securing
19 releases of judgment liens against the eight parcels of land in the Mountain Air
20 Development where MAUC utility assets are located, e.g., wells, pump stations,
21 tanks, lift stations, etc. (Fee Parcels), and to cover the fees and costs related to this
22 transaction. One hundred percent of the purchase price will be used for those
23 purposes.

1 **Q. PLEASE DESCRIBE THE FEE PARCELS AND THE UTILITY ASSETS**
 2 **LOCATED ON THEM.**

3 **A.** The Fee Parcels are listed in Exhibit D to the APA as follows:

Description	Original Parcel ID	Original Acres	Acres After Subdivision	Location	Owner
Well Site 1	070812873342000	0.73	1.627	Mountain Air Drive & Cliff's Edge Drive	Mountain Air Land Development Corporation
Well Site 2	070808779531000	6.85	1.505	Mountain Air Drive & Cliff's Edge Drive	Mountain Air Land Development Company, LLC
Lookout Water Tank	070812960888	1.23	0.411	End of Jumpoff Rock Road	Mountain Air Development Corporation
Nettles Cove Water Tank	070808986864000	1.47	0.352	Nettles Cove Road	Mountain Air Development Corporation
18 th Tee Pump House	070920911131000	7.17	0.115	Stoney Falls Loop	Mountain Air Development Corporation
Waterfall Cabins Pump House	070920820300000 0709-18-83-3122	7.37	0.704	Mountain Air Drive & Falls Crossing	Mountain Air Development Corporation
Ball Road Wells 7 & 8	070900575603000	3.45	0.979	Ball Road	Banks Holding Company, L.P.
Well Site 4	070919617955000	0.73	0.753	Well House Road	Mountain Air Development Corporation

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4 **Q. HOW DID THE FEE PARCELS COME TO BE ENCUMBERED BY**
 5 **JUDGMENT LIENS?**

6 **A.** Lawsuits against MADC as a result of defaults on several different construction
 7 loans during the “Great Recession” in 2007-2009 culminated in judgments being
 8 entered against MADC which encumbered all of MADC’s real property. Some of

1 these liens resulted from fully litigated cases and others resulted from post-
2 foreclosure deficiency judgments.

3 **Q. PLEASE DESCRIBE THE JUDGMENT LIENS ENCUMBERING THE FEE**
4 **PARCELS.**

5 A. The Fee Parcels listed in Exhibit D to the APA are subject to and encumbered by
6 the following judgment liens, except that the Ball Road Wells 7 and 8 site is only
7 subject to the Judgment Lien in File 14 CvS 111 (listed as No. 2 below):

- 8 1. Titan Yancey Holdings, LLC is the successor-in-interest to a Judgment
9 originally entered on February 6, 2018, in favor of RES-NC Settler's Edge
10 Holding Company, LLC, in the principal amount of \$12,929,216.19 against
11 MADC and others in Yancey County Superior Court File No. 10 CvS 279, as
12 reflected in a filing made in that case on or about April 20, 2018. I am informed
13 and believe that as of April 28, 2022, the principal and interest due on this
14 judgment totaled \$23,355,823.29.
- 15 2. Titan Yancey Holdings, LLC is also the successor-in-interest to a Judgment
16 originally entered on July 31, 2013 in favor of Gibraltar BB2, LLC in the
17 principal amount of \$3,719,850.95 against Mountain Air Development
18 Corporation ("MADC") in Yancey County Superior Court File No. 14 CvS 111,
19 as reflected in a filing made in that case on or about February 1, 2018. I am
20 informed and believe that as of April 28, 2022, the principal and interest due on
21 this judgment totaled \$2,809,055.21.
- 22 3. Titan Yancey Holdings, LLC is also the successor-in-interest to a Judgment
23 originally entered on November 17, 2015, in favor of Bank of North Carolina
24 against MADC and others in the principal amount of \$750,000 in Yancey
25 County Superior Court File No. 14 CvS 294. I am informed and believe that as
26 of April 28, 2022, the principal and interest due on this judgment totaled
27 \$1,209,256.50.
- 28 4. Four Jacks, LLC is the successor-in-interest to a Judgment originally entered
29 in favor of Young & McQueen Grading Company, Inc. against MADC in the
30 principal amount of \$8,454,827.29 in Yancey County Superior Court File No.
31 17 CvS 218. I am informed and believe that as of April 28, 2022, the principal
32 and interest due on this judgment totaled \$11,570,205.33.

33 **Q. WHY IS IT NECESSARY THAT JUDGEMENT LIENS NEED TO BE**
34 **RELEASED AS TO THESE PARCELS?**

35 A. MADC and one affiliated entity owning one of the Fee Parcels had never conveyed
36 the parcels where those utility assets are located to MAUC. When MADC's lenders
37 secured judgments against MADC those judgments created liens encumbering all

1 of MADC's property, which included the Fee Parcels where utility infrastructure is
2 located.

3 When the economy tanked beginning in 2007, development slowed and lot, home
4 and condominium sales slowed to the point that MADC could no longer service
5 its debt. MADC defaulted on its loans which ultimately resulted in judgments
6 being entered against it in Yancey County Superior Court .

7 The APA with CWS requires MAUC to convey all of the assets used in providing
8 utility services, including the Fee Parcels, free and clear of any encumbrances. The
9 only way we can secure release of the judgment liens as to the Fee Parcels is by use
10 of the sale proceeds, with those releases to be accomplished simultaneously with
11 the closing. Neither MADC or MAUC have the resources to otherwise secure the
12 release of these judgment liens as to the Fee Parcels.

13 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

14 A. Yes, at this time.

William R. (Randy) Banks
President, CEO
Mountain Air Development Corporation

Mr. Banks has an extensive background in development, operations and management of resort and residential communities. In 1975 Mr. Banks was hired as the first Director of Skiing for the newly developing Wintergreen Resort near Charlottesville, VA. In addition to his responsibilities at Wintergreen, he served as a consultant to multiple ski areas and programs throughout the United States.

Following his career with Wintergreen Development, Inc., Mr. Banks expanded his background in community resort and development operations with such well-known development companies as The Hilton Head Company, Hilton Head, SC and with Florida based Gulfstream Development Corporation, where he was responsible for projects in Hilton Head, SC, St. Marys, GA, Jacksonville, FL and Amelia Island, FL. Mr. Banks returned to his hometown of Burnsville, NC in 1989 to launch the development of the Mountain Air community with his family. Beyond his role as President/CEO of Mountain Air, Mr. Banks has served as consultant to resort communities in the Carolinas, Florida, Virginia, Georgia, Colorado, Hawaii and the Caribbean.

He has served on the President's Council and Board of Directors of the National Association of Home Builders and has served as a local President and State Director of the Home Builders Association of Georgia.

From 2010-2012, Mr. Banks served as Chair of the Recreational Development Council of the Urban Land Institute, of which he has been a member since 1986. This appointment reflected his dedication to responsible leadership in the real estate industry. Proof of his dedication can be seen in the Mountain Air community development of which he is President and CEO. Mr. Banks' stewardship of Mountain Air included retaining an in-house naturalist as well as a community organic gardener, to perpetuate and provide educational opportunities for environmental activities in the region. In 2003 Mountain Air was voted "Best Community in America" by the National Association of Homebuilders and in 2009 Mr. Banks was named "Developer of the Year" by the North Carolina Chapter of the Community Association Institute.

In addition to his continuing ULI responsibilities, Mr. Banks is a former member of the American Resort Development Association and the Community Association Institute. Locally, he has been very active in area economic development initiatives. He served as a long-time board member of AdvantageWest, the former Western North Carolina Regional Economic Development Commission, and the WNC Better Business Bureau. He formerly served as board member of the Parkway Playhouse, the Yancey County 21st Century Community Committee and the President's Board of Advisors for Mars Hill College. Mr. Banks is an alumnus of the University of North Carolina – Charlotte.

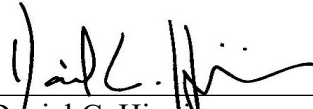
He, along with his wife Jeani (and an occasional visit by their son Mitchell!) continue to call Burnsville and Mountain Air their home.

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document, has been served on all counsel of record for all parties in this docket, if any, and the Public Staff, by either depositing same in a depository of the United States Postal Service, first-class postage prepaid and mailed by the means specified below, or by electronic delivery.

This the 16th day of June, 2023.

BURNS, DAY & PRESNELL, P.A.



Daniel C. Higgins
Post Office Box 10867
Raleigh, NC 27605
Tel: (919) 782-1441
Email: dhiggins@bdppa.com
Attorneys for Pluris