

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. W-1300, SUB 92

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	
Blue Heron Asset Management, LLC, and)	
Liberty Senior Living, LLC,)	
Complainants)	
)	
v.)	ORDER SERVING ANSWER
)	AND MOTION TO DISMISS
)	
Old North State Water Company, Inc.,)	
Defendant)	

BY THE COMMISSION: Notice is hereby given that on June 12, 2023, the attached Response, Motion to Dismiss, and Answer of Defendant has been filed with the Commission, setting forth the admissions or denials of the complaint or an offer or other statement of Defendant relating to satisfaction of the complaint.

Rule R1-9 of the Commission's Rules provides that if the Answer of Defendant is satisfactory to you as Complainants, then no further proceedings will be held in this docket.

You are, therefore, requested to review the attached Answer of Defendant and advise the Commission whether the Answer is acceptable to you and, if not, whether you desire a public hearing to present evidence of your complaint. You may advise the Commission of your position by filing a separate Reply to the Answer or, if you so desire, you may check the appropriate box on the attached form, sign the form, and return it to the Commission.

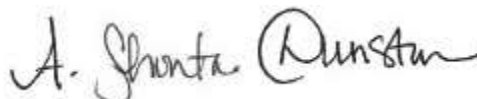
This Order will be served on Complainants by United States certified mail, return receipt requested. If Complainants do not file a reply or request a hearing by July 21, 2023, the Commission will assume the complaint is satisfied and this docket will be closed.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 10th day of July, 2023.

NORTH CAROLINA UTILITIES COMMISSION



A. Shonta Dunston, Chief Clerk

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Complainants,)	RESPONSE,
)	MOTION TO DISMISS,
)	AND ANSWER
v.)	
)	
Old North State Water Company, Inc.)	
Respondent)	

NOW COMES Respondent, Old North State Water Company Inc. (“ONS” or “Respondent”) by and through undersigned counsel, and pursuant to Rule R1-9 of the North Carolina Utilities Commission, responds to the claims asserted by Complainants, Blue Heron Asset Management, LLC (“Blue Heron”) and Liberty Senior Living, LLC (“Senior Living”) collectively (“Complainants”) by moving to dismiss the complaint, and answering the enumerated allegations as follows, and responds to the allegations of the Complainants set forth in their complaint of May 26, 2023.

The correct name, address, and electronic mailing address of Respondent is:
Old North State Water Company, Inc.
3212 6th Avenue South, Suite 200
Birmingham, Alabama 35222
jmcdonald@integrawater.com

The correct name, address and electronic address of Respondent’s attorney is:
Edward S. Finley, Jr., PLLC
2024 White Oak Rd.
Raleigh, NC 27608
edfinley98@aol.com

INTRODUCTION

ONS acquired the Briar Chapel WWTP and collection system from Briar Chapel Utilities LLC, the operating subsidiary of NNP-Briar Chapel, LLC (“NNP”). NNP is the developer of the Briar Chapel subdivision. The system was developer owned. ONS acquired the system from the developer subsidiary through an Asset Purchase Agreement that resulted in a zero rate base, all in accord with NCUC policy of minimizing rate base and usage rates, ultimately benefiting end use customers. The APA used a commonly relied upon financing device of repaying the developer with subsequently received the connection fees. The connection fees were agreed upon in the APA by the contracting parties and were not based on any other particular cost of service principles. Receipts from the connection fees were to repay NNP for its investment in the sewer system. The NCUC approved the acquisition and acknowledged the \$1,500 connection fee without further cost of service justification.

ONS assumed the obligation to serve structures constructed in the future by builders in the Briar Chapel service area such as Blue Heron and Liberty Senior when it acquired the system, and ONS assumed the future obligation to expand the WWTP to be prepared to make service available to structures built by those builders through interconnection. This ultimately required an expansion of the WWTP by an additional 250,000 gpd.

The APA with NNP would not have provided funds to serve demand not caused by NNP’s initial development activities as anticipated in the APA.

In anticipation of expansion, in 2021 ONS obtained engineering information and costs and filed for new connection fees to provide funds through CIAC from builders in the position of Blue Heron and Liberty Senior. ONS relied upon the cost of service calculations to support its request of \$4,000 per REU. The timing of the application was such as to have the new rates in effect when ONS was called upon to interconnect builders such as Blue Heron and Liberty Senior. The utility service to be provided in exchange for the connection fees was interconnection of collection pipes.

Blue Heron and Liberty Senior acquired property and undertook steps to build structures in Briar Chapel knowing full well their property was in the ONS service area and ONS had an exclusive right to serve without competition but also the obligation to serve the Blue Heron and Liberty Senior properties on terms approved by the NCUC. Had Blue Heron and Liberty Senior undertaken proper due diligence they would have learned that expansion of the WWTP would have been required, and builders such as Blue Heron and Liberty Senior would have been looked to for funding at a rate based on the cost of the expansion.

Complainants bought property and apparently undertook construction without such due diligence and without communication with ONS or regulators to determine what contribution would be expected.

After Blue Heron was well underway but well before it would need interconnection it applied to ONS for a commitment to provide service. ONS did not solicit through word or deed an application from Blue Heron. Blue Heron apparently needed evidence of willingness to serve to obtain authority to proceed from Chatham County, for example. ONS accepted the application but told Blue Heron the invoice for connection fees would be conveyed in the future. Blue Heron accuses ONS of a bait and switch. Ostensibly, the bait is to accept the unsolicited application for service soon after Blue Heron submitted it. Blue Heron had no choice for an alternative provider of sewer service. ONS extended no bait. ONS accepted the application to assist Blue Heron in order for Blue Heron to proceed but never suggested much less promised that the connection fee rate would be \$1,500 at any time Blue Heron was ready to interconnect.

Well before Blue Heron submitted its application ONS had applied to the Commission for a connection fee increase in anticipation of the requests of builders like Blue Heron. ONS's application was based on cost of service information and a calculation of REUs that would provide appropriate funding. The ONS application was calculated to maximize CIAC and reduce rates to end users. The request was a public document. Had Blue Heron asked, ONS would have willingly informed Blue Heron that the connection fees would be at the rate the Commission would approve in the pending docket. ONS had nothing to hide. ONS would never have willingly permitted Blue Heron to pay a connection fee in advance of a distant but

unknown interconnection date at a rate negotiated with NNP many years in the past to finance facilities already in place and paid for when ONS had pending its request to increase the fees based on the costs for an expansion to serve builders like Blue Heron.

Blue Heron did not undertake appropriate due diligence and had no basis to assume it would be permitted to pay connection fees based on an APA ONS had executed with NNP that financed the original WWTP capacity that ONS would need to serve properly developed by NNP.

ONS never made any representation or took any action to lead Blue Heron to conclude that Blue Heron would be charged \$1,500 connection fees.

ONS accepted an application to assist Blue Heron in obtaining the commitment from Chatham County to proceed with the project already well underway. By so doing ONS provided assurance that when and if Blue Heron's project was completed, wastewater capacity and service would be available at the time of needed interconnection.

The date of interconnection establishes the time the rate for connection fees is determined. Had ONS charged Blue Heron the connection fees and had Blue Heron never completed the project and never received interconnection, ONS would have never earned the connection fees, and Blue Heron would have been entitled to a refund. Had ONS quoted a charge for connection fees at the time it accepted the application and had Blue Heron not completed the project and not received interconnection, ONS would not have been permitted to collect the connection fees at any quoted rate. Had ONS quoted a connection fee of \$4,000 per REU and had Blue Heron delayed interconnection until the NCUC in the meantime had approved a higher connection fee, Blue Heron would have been required to pay the subsequently approved increased fee.

ONS knew that Blue Heron was far from being prepared to interconnect at the time the application was submitted. ONS told Blue Heron that it would provide an invoice at a later time. ONS did so anticipating that the NCUC would rule upon and hopefully approve the pending request to set the connection fee at \$4,000 per REU that was calculated to finance the 250,000 gpd expansion, part of which would be needed for the Blue Heron project to proceed.

In anticipation of serving property such as that on which Blue Heron was constructing its apartment complex, ONS sought an increase in connection fees but sought no increase in waste water usage fees. Had ONS not sought and had the NCUC not approved the connection fees that would have served as CIAC to expand the WWTP, the costs ONS would have incurred to make the expansion would require recovery of those costs through usage rates. One way or the other, Blue Heron and those receiving wastewater services from property on which Blue Heron was building facilities would have to pay for the expansion. Regulated public utilities charging rates based on a rate base/rate of return formula regularly are criticized for padding the rate base to increase profits. Here, ONS is seeking connection fees as CIAC that reduce the rate base and minimize rates.

In contrast to unjustified and ever evolving allegations by Blue Heron that ONS has engaged in deceptive trade practices and a bait and switch, has violated General Statutes and Commission rules, ONS has followed Commission orders based upon well established and approved practices that minimize rate base and minimize rates that end use consumers will be charged over time. Blue Heron is being charged what the NCUC has approved and what Blue Heron should pay as a builder in the ONS Briar Chapel service territory. If Blue Heron, through lack of foresight and through improper due diligence, cannot charge those who rent apartments in its project the rates Blue Heron had hoped so as to maximize its profits due to increased costs, Blue Heron has only itself to blame.

Liberty Senior is even unable and does not assert that it has a contract to receive interconnection. Liberty Senior inquired as to when it could obtain interconnection at \$1,500 per REU. Liberty Senior did not submit any application for interconnection until after the Commission approved the increase in connection fees.

Blue Heron and Senior Liberty are not privy to nor a successor in interest to previous asset purchase agreements between NNP and ONS. While there has been a transfer of the facilities serving wastewater services in the Briar Chapel service area, that transfer was based upon an APA in which the rate base to the acquirer, the connection fees to be charged and the REUs serving as billing determinants for calculating the connection fees for each connection were interdependent. Each of those variables was negotiated between the seller and the

acquirer and determined the rate base in the hands of the acquirer for which the seller knew the acquirer would bear responsibility to finance in some measure through connection fees, which the acquirer agreed to collect and pass through to the seller. The NCUC approved the transfer and did not question the usage rates requested, the rate base established in the transfers or the collection fees or REUs in the APA.

Blue Heron and Liberty Senior are in a completely distinct category from the parties in the asset purchase agreement to which they refer. Blue Heron and Liberty Senior have never been an owner of any of the wastewater facilities and have made no contribution to finance any of the facilities that were in place or contemplated to be constructed as addressed in the APA and the Commission's order approving the transfer based on the APA. Nowhere in any prior orders are there decretal paragraphs or tariffs addressing how REUs are to be calculated. Prefatory language and findings of fact in orders reciting history and noting the existence of APAs and some of their terms cannot be cited as imposing requirements on the utility or consumers of its services at a time when the orders have been superseded by subsequent orders. ONS has justified the REUs through reference to DEQ requirements.

FACTUAL BACKGROUND AND CONTEXT

1. Response to Blue Heron's Claims for a Refund of Connection Fees.

With respect to Blue Heron's claim that ONS has assessed charges for sewer services in excess of those approved by the North Carolina Utilities Commission, Complainants' reading of the Commission's orders and interpretation of the law as applied to the facts are erroneous. In summary, on April 19, 2021 ONS provided an invoice to Blue Heron to pay connection fees with respect to the Perch Apartment Building project¹ pursuant to the connection fees approved by the Commission in Docket No. W-1300, Sub 71 on April 19, 2021. The invoice was submitted

¹ Blue Heron first asserted it should not be charged connection fees pursuant to the Sub 71 order by letter dated May 13, 2021 in which it referred to the project as the "Perch Apartments." Blue Heron now refers to the project as the "Knoll." ONS replied to the May 13 letter on May 20, 2021 explaining that Blue Heron would be required to comply with the Sub 71 order, making Blue Heron aware at that time as it has consistently thereafter that its excurses for objecting to do so are without merit. To this day Blue Heron persists in repeating its claims while ignoring ONS's reasons why Blue Heron's claims are invalid. Blue Heron remains unable to address much less refute ONS's arguments.

after the order of the Commission was issued. As of April 19, 2021 no interconnection to the Perch project had been made. No services pursuant to any Commission approved tariff had been provided to Blue Heron on that date. No contract exists between ONS and Blue Heron obligating ONS to allow Blue Heron to interconnect based on fees of \$1,500 per REU. Blue Heron has paid the fees as invoiced by wire transfer on August 31, 2022

Blue Heron based an initial claim in a February 28, 2023 letter that ONS bound itself to provide connection to the Perch Project at \$1,500 per REU on the following recitation:

On March 23, 2021, Blue Heron signed and submitted an application to ONSWC for the provision of sewage connection services in the Briar Chapel area. On this same date, ONSWC submitted an associated Intention to Provide Service to Chatham County. Despite receiving a completed application form and tendering the Intention to Provide Service, ONSWC told Blue Heron that it would provide an invoice for the contracted-for connection fee “at a later date.” At 3:21 pm on April 19, 2021, ONSWC provided Blue Heron an invoice for the connection fee, which used the newly established rate of \$4,000 per REU.

Blue Heron’s claim of a binding contract between ONS and Blue Heron to allow interconnection at \$1,500 per REU is based on the submittal of an application to ONS without reference to the fee per connection, which Respondent assumes Complainants allege to be a firm offer.² The Blue Heron application was submitted on March 23, 2021, 15 days after ONS filed its application with the Utilities Commission to increase the connection fees. Next, Blue Heron referred to the “tendering” by ONS to Chatham County of an “Intention” to Provide Service. By this Respondent assumes Blue Heron asserts that this is the acceptance of the offer of Blue Heron to accept or receive interconnection at the rate of \$1,500 per REU even though that rate is not set forth in the “offer” nor referred to in the Intention. No connection fee was submitted to ONS with the Application. Any dealings between ONS and Chatham County would

² The introductory paragraph of the Application, Customer # 7186 BC states: Consumer agrees to promptly pay the application fee, service fees, deposits, late fees, after-hour fees, processing fees and all other charges and fees of Utility (“Charges”) at Utility’s standard rates as set by Utility now or at any future time, and to comply with Utility’s rules, regulations and policies, as modified from time to time by Utility (“Rules”). Utility’s obligation to provide water/wastewater service is subject to (i) Utility’s acceptance of this application and (ii) the provision of any water or sewer license, franchise, easement, right-of-way or other agreements that may be between Utility and any governmental authority or other person. Utility shall have exclusive right to furnish the service(s) to the service area. Consumer will read and comply with the water and wastewater policy manual available at www.integrawater.com or upon request from Utility at the address shown. The signed application and applicable charges must be submitted to Utility at the address set forth and Consumer further agrees that: . . .

not address the rate or fee Blue Heron would pay ONS for the provision of utility service. ONS would provide no sewerage service to Chatham County. Blue Heron fails to explain how the “tendering” of the “Intention” document to one party, the County, is an acceptance of an offer made by another party, Blue Heron, to pay for interconnection at an identified rate not specified in either document. Nor does Blue Heron explain how an “Intention” would constitute an acceptance even if it were to Blue Heron, the party Blue Heron apparently maintains to have made the offer and even though the Intention does not mention \$1,500 per REU. It is unclear, based on Blue Heron’s recitation, when exactly this allegedly binding contract at the rate it advocates became effective.

No explanation is provided as to how an “intention” constitutes a binding obligation to do anything for any party.

Next Blue Heron cited selected provisions of N.C. Gen. Stat. § 62-139(a) in support of the assertion that ONS has failed to charge fees for services as authorized by the North Carolina Utilities Commission. Blue Heron omitted provisions of the subsection of the statute with ellipses that are pertinent here. The complete subsection is set forth below:

No public utility shall directly or indirectly, by any device whatsoever, charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered by such public utility than that prescribed by the Commission, nor shall any person receive or accept any service from a public utility for a compensation greater or less than that prescribed by the Commission.

Emphasis added.

The “service rendered” here is interconnection. It is interconnection through facilities that enable sewage to be discharged from the building(s) constructed by Blue Heron to be transmitted through a sewerage collection system to sewage treatment facilities owned and operated by ONS. No such interconnection facilities were in place on the date Blue Heron submitted what Blue Heron designates as an offer, March 23, 2021, or the unidentified date of the receipt of the Intention to Chatham County. In fact, Blue Heron was aware it could not interconnect its project to the Briar Chapel sewer system. Mr. Kevin Wade with Blue Heron stated in an email dated March 2, 2022, “we'd like to get the connection fee settled, but need confirmation the sewer is available prior to making any payment.” In addition, Blue Heron knew the permit authorizing it to connect required that the SD East lift station and force main

be completed prior to Blue Heron being able to connect. The FTSE was issued July 13, 2020 and stated explicitly that the force main and pump station had to be complete. Blue Heron knew the lift station was not completed in March, and, due to construction delays, the lift station was not completed until July of 2022. Blue Heron also acknowledged it had construction defects and debris in its gravity sewer that had to be corrected prior to making the connection. This is acknowledged in an email dated May 18, 2022 and as late as August 6, 2022 by Blue Heron's contractor (Evolve).

Next, Blue Heron maintained that a "sale" of sewer services took place between ONS and Blue Heron on March 23, 2021. This appears to be an alternative theory from the argument that a contract to provide interconnection at \$1,500 per REU occurred on or about March 23, 2021 based in part on actions by Chatham County. Technically speaking, an interconnection of pipes through which sewage flows from an apartment building is made with the collection system owned and operated by a sewer utility is not a sale as the term sale is commonly used with respect to public utility regulation and with respect to utility fees and charges. A sale commonly refers to the provision of a commodity, an obligation to make a commodity available or receipt of a commodity, such as wastewater by a sewer utility, by the public utility from the end use customer. Even if one were to attempt to classify an interconnection as a sale, no interconnection occurred on March 23, 2021 or April 19, 2021. It would have been impossible to make an interconnection on those dates because facilities were not in place to enable an interconnection to be made. Substantial delays occurred. In order to make the interconnection Blue Heron had to clean and inspect the line. The line had numerous construction defects and debris in it.

Under the Blue Heron first theory the contract is formulated when Chatham receives the Intention. Under the second inconsistent theory the contract is formulated when ONS accepts the Blue Heron application. Under the second theory the action of Chatham County is not mentioned.

As stated, under this second theory Blue Heron argued that service was provided when ONSWC accepted the Blue Heron application. This is not a case where ONS is refusing to make the interconnection with Blue Heron or to provide the other sewer services for which the

application was submitted. The interconnection has been made and sewerage has been discharged, accepted and processed. The dispute between the parties addresses the fee to be paid in exchange for the contemplated interconnection due on or before the interconnection was made and charges for the collection and treatment services addressed in the application were provided. The application and ONS's acceptance of it are not the determinative factors dictating the fee to be paid. That determination rests with the North Carolina Utilities Commission. The North Carolina Utilities Commission establishes the fee, and it is due on or before the date the services covered by the application are rendered.

Complainant earlier had contested the requirement by ONS that they pay the invoiced connection charge. Therefore, Complainants had contested the assessed fees in advance of its payment of the fee. Complainants had plenty of time to take their complaints to the Utilities Commission prior to making the payment or to make the payment under protest. They did neither. Complainants have waived their right retroactively to contest payments of the connection fee or the subsequent charged commodity charges. Where, after expiration of an old contract between a city and the electric company regarding electric current, and during deadlock regarding terms to be included in the new contract, the company continued to bill the city monthly in accordance with rates prescribed by the schedule on which the old contract was based, and the city continued to make payments in accordance with bills rendered, payments made without protest on a month-to-month basis constituted at each month an election to pay on the basis of the old schedule and a waiver as to that month of the right to any contract under the company's new schedule containing lower rates. *City of High Point v. Duke Power Company*, 120 F.2d 866 (4th Cir. 1941). Where, after expiration of an old contract between a city and the electric company regarding electric current and during deadlock regarding terms to be included in the new contract, the company rendered monthly statements based on rates contained in the old contract, the city, which, with full knowledge of the facts, paid bills as rendered, could not recover any part of the payments on the ground that the city should have been charged lower rates contained in the company's new schedule. *City of High Point v. Duke Power Company*, 34 F. Supp. 339, affirmed 120 F.2d 866 (4th Cir. 1941).

While Complainants have and continue to attribute to ONS clandestine and underhanded motives, the request for the \$4,000 per REU was pending before the Commission well before Blue Heron submitted its application and Liberty Senior made any inquiry to ONS as to a rate for interconnection and before the issuance of the order of approval. The date on which the Commission issued its approval was out of ONS's control. The application had been reviewed by the Public Staff and approved by and submitted by that agency to the Commission for the Commission's approval. The requested increase was to finance system improvements, an expansion of the Briar Chapel WWTP by 250,000 gpd, that would be needed to serve Blue Heron, Liberty Senior and other consumers. All of this was through public submissions and was widely known in the Briar Chapel subdivision. Customers in the Briar Chapel area were aware of the submission and on March 19, 2021 communicated with the Commission in support, stating that "the new development which is driving these upgrades should help offset the capital costs for this upgrade with an increase in the connection fees from \$1,500 to \$4,000 per residential equivalent units (REUs)."

Blue Heron insists that it has a binding contract with unambiguous terms with ONS to pay \$1,500 per connection based on the Commission order in Sub 9. However, even Blue Heron is forced to admit that it is unable to argue that that order directs unambiguously that the result applied to the Blue Heron produces the \$69,000 bill Blue Heron asserts to be the correct fee. Blue Heron argues that according to a chart in the APA with NNP REUs for the Blue Heron project are 46, producing a fee of \$69,000. However, Blue Heron argues, "Alternatively, should REU be computed based on design flow, the 51,1450 GPD for Blue Heron's development would be divided by 250 GPD-- per the APA and the BCU agreement-- resulting in 204.6 REUs. This would result in a fee of only \$306,840 (204.6 REUs x \$1,500)." February 28, 2023 letter page 5, fn. 2. Blue Heron cannot claim it has a binding contract with unambiguous terms as to the rate for connection fees when at the same time it argues that the terms as to the compensation called for are subject to different interpretations.

As recited in the Company's application in Docket No. W-1300, Sub 71, the justification for the increase in the connection fee to \$4,000 per REU is to provide funds from those like Blue Heron seeking to interconnect to the Briar Chapel sewer system for expansion of the sewage treatment plant in order to meet the demand anticipated from interconnection with those consumers. "The primary reason for the increased wastewater connection fee is to aid in recovery of cost of the facility expansion and provide service for new development."

Connection fees such as those at issue constitute contributions in aid construction.

Contributions in aid of construction not passed through to a seller constitute reductions to rate base and therefore reduce the rates end users in the Briar Chapel development will pay for sewage services they receive. Contributions in aid of construction, by reducing the rate base, reduce the return ONS is entitled to receive. Therefore, it is not to the financial advantage of ONS to increase the connection fees. These facts refute the claim that ONS's motives were as Blue Heron asserts.

If any doubt existed as to whether the connection fee Blue Heron and Liberty Senior should pay is \$1,500 per REU or \$4,000 per REU, common sense and fairness support the higher fee justified by the need to expand the facilities for the benefit of consumers ultimately residing in the Blue Heron building.

2. Response to Blue Herons' Claims That REUs Should Be Calculated Differently.

Complainants take issue with the formula ONS has used to calculate the REUs upon which it has based its invoiced connection fees to Blue Heron and Liberty Senior. As explained as early as in the ONS's letter of May 20, 2021, addressing this same complaint in the May 13, 2021 letter on behalf of Blue Heron, ONS explained the basis for the calculation. This explanation is repeated here:

The appropriate way to calculate residential equivalent units is through reference to the wastewater collection system extension permit authorized by the Division of Water Resources of the State. Based on the July 13, 2020 letter to BHBC Apartments, LLC, DWR granted permission for the construction and operation of approximately 444 linear feet of eight inch gravity sewer to serve 183 one and two-bedroom apartments, 17 three bedroom apartments and a clubhouse as part of the Perch project, and the discharge of 51,140 gallons per day of collected domestic wastewater into Old North State's existing Briar Chapel sewerage collection system. This construction permit controls the amount of

wastewater Old North State is responsible to process and forms the correct gpd on which to calculate the connection fees.

Briar Chapel has received from DEQ a flow reduction so that its capacity to treat wastewater is now calculated based on a gallons per bedroom of 189 gallons per day. Old North State's REU is therefore 189 gpd. Old North State divided the 51,140 gpd by 189 gpd = 270.58 x \$4000 = \$1,082,328.04. Were REUs calculated in the manner you suggest, wastewater at some point would exceed the capacity of the sewage treatment plant as permitted and violations likely would occur. Were other potential entities seeking connection to calculate REUs the way you suggest, the capacity very well would be exceeded in short fashion.

As stated above, Blue Heron apparently maintains under at least one of its theories that the connection fee should be \$69,000. Alternatively Blue Heron argues that the fee should be \$306,840. If Blue Heron has a binding contract to pay a connection fee, the fee is either \$69,000 or \$306,840. If the terms are unclear there is no binding contract. The \$69,000 is based on 46 REUs x \$1,500. Blue Heron bases the 46 REUs on the fact that Blue Heron has two 2 inch meters and two 3 inch meters. Blue Heron maintains that it is appropriate to look back many years to 2014-15 at the acquisition of the Briar Chapel system by ONS addressed in Docket No. W-1300, Sub 9 or to the order granting a CPCN to ONSWC's predecessor in 2009. Also, the reference to the \$1,500 connection fee is from the 2014 Asset Purchase Agreement between Briar Chapel Utilities, LLC and ONS. ONS's services to Blue Heron are provided under the terms of the Commission order of April 19, 2021 in Docket No. W-1300, Sub 71, not the earlier orders Blue Heron references.

Blue Heron examines calculations of purchase price and recites agreements between the contracting parties with respect to connection fees to be charged if approved by the Commission in Docket No. W-1300, Sub 9. As explained above, the \$4,000 per REU and the number of REUs are calculated and determined based on requirements existing in 2021 and thereafter, those relied upon by the Commission in Docket No. W-1300, Sub 71, and not those to which Blue Heron refers. At the time of the 2014 Asset Purchase Agreement and the transfer addressed in Docket No. W-1300, Sub 9 no wastewater collection system extension permit authorized by the Division of Water Resources of the State to BHBC Apartments, LLC had been granted.

Furthermore, the use of connection fees in the context of the acquisition and sale of sewer facilities serves a completely different function from the use of connection fees based on cost of service principles assessed by a sewer utility to a new builder in its service area to finance the construction of post-acquisition improvements to serve customers. In the acquisition and sale context connection fees are used as financing devices to facilitate the sale. The Commission has so held. As Blue Heron recited in its February 28, 2023 letter at the bottom of Page 3: “The Sub 9 order states that ‘[t]he purchase price for the Briar Chapel wastewater utility system under the APA is \$1,500 per residential equivalent unit (REU) for each new connection and the future expansion. . . .’” In Sub 9 the seller was Briar Chapel Utilities, LLC. The developer of Briar Chapel is NNP-Briar Chapel, LLC. The developer owned the seller. The connection fees negotiated by the parties to the APA of \$1,500 per REU were to be passed through to the developer, not retained by the buyer. Moreover, any discussion of a formula or chart to calculate REUs through which the buyer would pay the seller addressed what the parties negotiated then based on facts existing at that time. The 250 gpd x the four meters used to calculate the REU would be insufficient for a fee to Blue Heron. In addition, the chart in section 1.27(b) of the APA also is based on 250 gpd x the increased size of the meters for nonresidential buildings. The chart assumes one meter per nonresidential building, not four meters to a multi-unit residential building as Blue Heron has installed. “If there is a water and/or wastewater meter”

As the connection fees to be collected by the buyer after the transfer were to be conveyed back to the seller as part of the compensation for the sale, the collection fees so collected at the \$1,500 rate did not constitute net CIAC, as is the case with the \$4,000 per REU charged Blue Heron as approved by the Commission in Docket No. W-1300, Sub 71. The \$1,500 was a negotiated fee and based on no particular cost of service justification.

Blue Heron has asserted that “the APA not only defines REU with a computational method, but it also references and incorporates the computation of REU as approved by the Commission in Docket No. W-1230, Sub 0.” The Commission’s April 20, 2015 Recommended Order and its final Order in Sub 9 contain no reference to any method through which to compute a nonresidential REU much less an REU for a multi-unit residential structure. The order makes no

reference to section 1.27(a) or (b) of the October 31, 2014 Asset Purchase Agreement. As admitted in Complainant's February 28, 2023 letter, "the Sub 9 Order does not explicitly state how to compute the REU . . ." The Sub 9 order does not address computation of REUs, explicit or otherwise.

The Briar Chapel developer, NNP-Briar Chapel, was to pay for all installation costs of the collection system extensions and, if necessary, the additional upset pond, effluent storage pond, and reuse spray irrigation facilities, and NNPP-Briar Chapel was to convey those components to ONSWC at no cost. The \$1,500 connection fee calculated by the REU method set forth in the Asset Purchase Agreement was a way to compensate the developer and was part of the purchase price. Just as in Docket No. W-1300, Sub 71 the connection fee established in that docket is to finance identified system improvements, the expansion of the WWTP with an identified cost and with an expectation of the demands from structures like the Blue Heron apartment building, the establishment of the REU and the connection fee in Sub 9 were based on financing a different set of improvements at a different price needed to serve existing and a different set of new customers.

The charges to Blue Heron and Liberty Senior for connection of \$4,000 per REU and the calculation of the REUs as set forth above were formulated to recover as CIAC costs for a defined system improvement. If either component of the connection fee to Complainants is modified as Complaints asserts, the anticipated CIAC will be far lower than that anticipated and relied upon to fund the needed improvements. The Commission's justification for approving the \$4,000 per REU would be nullified if the calculation for REU argued for by Complainants were permissible. The correct calculation for REUs must be as invoiced through reliance on up-to-date demand measurements for the particular Blue Heron or Liberty Senior project and the cost of the improvements for which the calculations were made.

In summary, Blue Heron connected its apartment building to the collection system of ONS long after the Sub 71 order took effect. Blue Heron paid a connection fee of \$4,000 per REU as required in the Sub 71 order. The REU upon which Blue Heron paid the connection fee was 189 gpd as invoiced by ONS. In spite of this, Blue Heron claims that at the time of the interconnection and at the time of its payment of the fee it had a binding contract to pay a fee

of \$1,500 per REU. It claims that it had a binding contract to pay a fee based upon an REU of 46. Blue Heron claims it had a binding contract to pay a connection fee in reliance upon an order that was no longer in effect at the time of the interconnection or at the time of the payment of the fee. The binding contract, which Blue Heron asserts it had with ONS, allegedly is based upon an order that nowhere made any reference whatsoever to any rate schedule with a REU of 46 or any formula or chart from which 46 REU should be computed. No such binding contract existed at the time of interconnection, at the time of the payment of the fee or at any time prior thereto.

The Liberty Senior claim repeats the Blue Heron claims but without any claim to a binding contract.

3. Response to Blue Heron's Claims for a Refund of Invoiced Service Charges.

Blue Heron asserts that it is owed a refund for the monthly usage fees it has paid to date. The reasons for rejecting that claim are the same as the reasons for rejecting the claim for a refund of the connection fee. In addition, Blue Heron cannot claim that any commitment to limit the connection fee based on the alleged contracts addressed above constrained ONS from charging the commodity charge approved by the Commission in its order in Docket No. W-1300, Sub 71 after the interconnection was made, sewerage accepted and bills submitted for services provided in arrears.

4. Response to Liberty Senior's Claims for a Reduction in Invoiced Connection Fees.

With respect to the claim by Liberty Senior, a distinguishing factors between that claim and the claim of Blue Heron is that Complainants' February 28, 2023 letter is the first claim made on behalf of Senior Liberty, and Senior Liberty has not yet interconnected, paid a connection fee or any monthly usage fees. Moreover, Liberty Senior has no valid much less a colorable claim that it has any agreement to receive interconnection based on any agreement entered into prior to the April 19, 2021 North Carolina Utilities Commission order in Docket No. W-1300, Sub 71.

The timeline with respect to ONS's correspondence with Liberty Senior is as follows: On March 19, 2021 ONS received an e-mail from Tanya Matzen with NNP-Briar Chapel that Liberty Senior Living was trying to secure permits but was not sure when construction would commence. ONS did not receive any correspondence or contact with Liberty Senior Living. On

March 19, 2021 ONS received a signed FTSE for Liberty Senior Apartments. On March 31, 2021 ONS received a phone call from Thad Moore of Liberty Senior wanting to know if Liberty Senior could purchase capacity with the current FTSE. Moore was advised that FTSE for the project was permitted at 38,150 gpd. On April 9, 2021 ONS received plans for the Briar Chapel Active Adult. On April 19, 2021 ONS informed Thad Moore with Liberty Senior Living that ONS would calculate an invoice connection fee. ONS asked for a clarification on Moore's mailing address. On April 19, 2021 ONS provided Thad Moore on behalf of Liberty Senior Living with a builder application and tap fee invoice. ONS also provided the April 19, 2021 NCUC order in Sub 71. On April 20, 2021 Thad Moore stated that Liberty Senior had prepared a financial model for the project for only \$1,500 per unit for 150 units. On April 20, 2021 ONS advised Thad Moore that the tap fee increase had been applied for several months earlier. ONS advised that the plant expansion to be recovered through the increased connection fees was driven by the commercial demands, and the Utilities Commission agreed to increase the fees accordingly. Only months later, on February 11, 2022, did ONS received construction documents from Liberty Common Skilled Nursing.

Likewise, in addition to these distinctions the justification for reducing the invoiced connection fee for Liberty Senior must be rejected for a number of the reasons set forth above justifying the rejection of the claims on behalf of Blue Heron.

MOTION TO DISMIS

Respondent moves to dismiss the complaint because, for reasons cited above, Complainants base each of their claims on the assertion that the connection fees they should pay of \$1,500 per REU are required by Commission orders and documentation predating the Commission's Order in Docket No. W-1300, Sub 71. The Sub 71 order is the only order addressing interconnection made subsequent thereto. Respondent interconnected Blue Heron's facilities after the Commission issued its Sub 71 order. Complainant, Liberty Senior, has not yet undertaken vertical construction and thus has not reached the point where an interconnection with the facilities can be made. Complainant, Liberty Senior, does not allege much less offer supporting factual evidence that it has any contract whatsoever obligating Respondent to interconnect at \$1,500 per REU. In addition, Complainants base their claims on

their assertion that billing determinants should be based on documentation and Commission orders that in no respect provide a basis or justification on legitimate cost of service principles that allow Respondent to recover costs it will incur to provide interconnection for and assess commodity charges to Complainants.

ANSWER TO ENUMERATED ALLEGATIONS

In response to the summary of its allegations set forth on pages one and two of the Complaint Respondent states: the summary does not contain numbered paragraphs but only a recitation of the allegations in the numbered paragraphs that follow it and as such requires no elaborate response. Nevertheless, Respondent answers that what Complainants characterize with hyperbolic adjectives and adverbs as a premeditated scheme to unlawfully extract millions of dollars in additional fees from its customers is in fact an invoicing of connection fees in accordance with the tariff in Respondent's schedule of tariffed fees as approved by the Commission in the order in effect when such fees would become due and owing from Complainants. Furthermore, rather than imposing a burden of end use customers, the connection fees will be used by Respondent to reduce the charges that it imposes upon end use customers over time, all in accordance with longstanding Commission policy.

1. In response to allegations set forth in paragraph 1 of the complaint, to the extent Complainants intend to allege the apartment complex is located within ONSWC's service territory, Respondent admits these allegations.
2. In response to allegations set forth in paragraph 2 of the complaint, Respondent answers that as of yet no apartment complex by the name of Inspire has been constructed in the Briar Chapel ONS service territory and therefore denies this allegation. Unless thus denied, the remaining allegations are admitted.
3. In response to allegations set forth in paragraph 3 of the complaint, these allegations identify counsel for Complainants and require no response.
4. In response to allegations set forth in paragraph 4 of the complaint, Respondent admits these allegations.

5. In response to allegations set forth in paragraph 5 of the complaint, Respondent admits the factual allegations contained therein.
6. In response to allegations set forth in paragraph 6 other complaint, Respondent admits these allegations.
7. In response to allegations set forth in paragraph 7 of the complaint, the allegations set forth therein contain a recitation of provisions of various statutes, contain no factual allegations and require no response to any facts asserted therein.
8. In response to allegations set forth in paragraph 8 of the complaint, Respondent admits the allegations contained therein.
9. In response to allegations set forth in paragraph 9 of the complaint, the allegations contained therein contain no assertions of fact and require no response thereto.
10. In response to allegations set forth in paragraph 10 of the complaint, Respondent admits these allegations.
11. In response to allegations set forth in paragraph 11 of the complaint , Respondent admits the allegations contained therein.
12. In response to allegations set forth in paragraph 12 of the complaint, Respondent answers that it lacks sufficient knowledge that the Knoll buildings have the separate water meters as alleged in this paragraph and therefore denies same.
13. In response to allegations set forth in paragraph 13 of the complaint, Respondent admits the allegations contained therein.
14. In response to allegations set forth in paragraph 14 of the complaint, Respondent admits the allegations contained therein.
15. In response to allegations set forth in paragraph 15 of the complaint, Respondent answers that the Liberty Senior project has not advanced sufficiently for Respondent to form a belief that the project has a meter and therefore denies this allegation.
16. In response to allegations set forth in paragraph 16 of the complaint, Respondent admits the allegations contained therein. Responding further, this ONS letter to Chatham County was not any correspondence to either of Complainants and did not

constitute any invitation to either apply for interconnection at any rate much less at a rate of \$1,500 or a rate based on any particular REU.

17. In response to allegations set forth in paragraph 17 of the complaint, Respondent admits the allegations contained therein. Responding further, Blue Heron initiated the submission of this application without any prompting from Respondent and without any representation or promise that Respondent was prepared to allow interconnection at \$1,500 per REU or that the REU billing determinant would be established by reference to any prior NCUC order or any Asset Purchase Agreement with another party.
18. In response to allegations set forth in paragraph 18 of the complaint, Respondent admits that the application is a standard form written by ONS and contains among other provisions language quoted by Complainant. Responding further, Respondent denies that the application Complainant submitted made any reference to much less any promise that interconnection whenever made would be at \$1,500 per REU or addressed any REU whatsoever. Respondent denies that any provisions in the application obligate Respondent to accept connection fees from Complainants other than those approved by the Commission in its 2021 order in Docket No. W-1300, Sub 71.
19. In response to allegations set forth in paragraph 19 of the complaint, Respondent admits the allegations contained therein. Responding further, Respondent's correspondence with Chatham County constituted no commitment to permit either of Complainants to interconnect at \$1,500 per REU.
20. In response to allegations set forth in paragraph 20 of the complaint, Respondent admits the allegations contained therein.
21. In response to allegations set forth in paragraph 21 of the complaint, these allegations contain allegations of law and conclusions with respect thereto and are not allegations of fact for which in a response is required. Responding further, Respondent denies that Respondent and Blue Heron created a legally binding contract for providing sewer connection services to Blue Heron at a rate of \$1500 per REU.
22. In response to allegations set forth in paragraph 22 of the complaint, Respondent admits that in an email dated March 23, 2021 Respondent informed Blue Heron that it

would provide an invoice for the connection fees at a later date and admits that Exhibit E as a true and correct copy of the March 23, 2021 email. Unless otherwise admitted, the allegations set forth in paragraph 22 are denied.

23. In response to graph 23 of the complaint, Respondent answers that this allegation describes the state of mind of Blue Heron, a subject of which Respondent has insufficient knowledge and belief and therefore denies same.
24. In response to allegations set forth and paragraph 24 of the complaint, Respondent admits the allegations contained therein.
25. In response to allegations set forth in paragraph 25 of the complaint, Respondent admits the allegations contained therein. Responding further, connections fees for which Complainants are responsible are to be calculated at the time of interconnection, which occurred only after the Sub 71 order was issued.
26. In response to allegations set forth in paragraph 26 of the complaint, Respondent admits that on April 19, 2021 after the Commission issued in its Sub 71 order (not the Sub 41 order), Respondent provided Blue Heron with an invoice for the connection fees, assessing the newly established rate then in effect of \$4,000 per REU. Respondent admits that it calculated the connection fee to Blue Heron to be \$1,082,320--approximately \$676,450 more than Blue Heron asserts it would owe if Respondent had used the rate of \$1,500 per REU that had been in effect prior to the Commission order. Respondent admits that Exhibit F is a true and accurate copy of the invoice. Unless otherwise admitted Respondent denies the allegations set forth in paragraph 26 of the complaint.
27. In response to allegations set forth in paragraph 27 of the complaint, Respondent admits the allegations contained in therein.
28. In response to allegations set forth in paragraph 28 of the complaint, Respondent denies the allegations contained therein.
29. In response to allegations set forth in paragraph 29 of the complaint, Respondent admits that on August 31, 2022 Blue Heron paid the connection fee in accordance with

the Respondent's invoice. Unless admitted, the remaining allegations set forth in paragraph 29 are denied.

30. In response to allegations set forth in paragraph 30 of the complaint, Respondent denies the allegations contained therein.
31. In response to allegations set forth in paragraph 31 of the complaint, Respondent admits that on April 1, 2021, Liberty Senior engaged in communications with Respondent regarding wastewater management services and that the emails attached to the complaint as Exhibit H are true and accurate copies thereof. Responding further, Liberty Senior's communication does not constitute a contract obligating ONS to do anything. Responding further, like Blue Heron, Liberty Senior initiated any correspondence with ONS addressing interconnection, and ONS never enticed or invited Liberty Senior to apply for interconnection at a rate of \$1,500 per REU.
32. In response to allegations set forth in paragraph 32 of the complaint, Respondent admits that Liberty Senior emailed ONS President John McDonald and that the email contained among other things: "What do we need to do to pay the \$1,500/unit connection fees associated with [Inspire]?" Responding further, this email does not constitute any contract obligating ONS to permit interconnection by Liberty Senior at \$1,500 per REU.
33. In response to allegations set forth in paragraph 33 of the complaint, Respondent denies the allegations set forth therein.
34. In response to allegations set forth in paragraph 34 of the complaint, on April 19, 2021 after the Commission had issued its order in Sub 71 increasing the tariff rate for interconnections made thereafter Respondent informed Liberty Senior that the invoice amount would be calculated on the current tap fee of \$4,000 per REU.
35. In response to allegations set forth in paragraph 35 of the complaint, Respondent admits that on April 19, 2021 after the Commission had issued its order in Sub 71, Respondent provided Liberty Senior with an invoice on which Respondent calculated the connection fee for Liberty Senior to be \$870,400, approximately \$504,620 more than

Liberty Senior asserts that it would have owed Respondent had Respondent used the rate of \$1500 per REU that had been in effect prior to the Commission's operative order.

36. In response to allegations set forth in paragraph 36 of the complaint, Respondent denies the allegations set forth therein.
37. In response to allegations set forth in paragraph 37 of the complaint, Respondent's application in Sub 9 and the Commission's order in that docket speak for themselves and require no response. Respondent denies the remaining allegations contained therein.
38. In response to allegations set forth in paragraph 38 the complaint, Respondent answers that the provisions of the Commission's order in Docket No. W-1300, Sub 9 speak for themselves and require no further response.
39. In response to allegations set forth in paragraph 39 of the complaint, Respondent answer is that provisions of the Commission's order in Docket No. W-1300, Sub 9 speak for themselves and admits that Exhibit I is a true and correct copy of the APA filed with the Commission in that docket. Respondent admits that the Sub 9 order does not state how to compute REUs. In further response, Respondent answers that the connection fees at issue in this docket are to be determined pursuant to the Commission's order in Docket No. W-1300, Sub 71 and not Docket No. W-1300, Sub 9 or any provisions therein.
40. In response to allegations set forth in paragraph 40 of the complaint, Respondent answers that the provisions of Section 1.27 of the APA speak for themselves and require no further response. Further responding to the allegations set forth in paragraph 40, Respondent answers that the APA that was an exhibit in Docket No. W-1300, Sub 9 is not an instrument to which reference can be made to establish connection fees Complainants should pay for interconnection.
41. In response to allegations set forth in paragraph 41 of the complaint, Respondent answers that the provisions of section 1.27 of the APA speak for themselves and require no further response. Further responding to the allegations set forth in paragraph 41, Respondent answers that the APA that was an exhibit in Docket No. W-1300, Sub 9 is

not an instrument to which reference can be made to establish connection fees
Complainants should pay for interconnection.

42. In response to allegations set forth in paragraph 42 of the complaint, Respondent answers that the provisions of Section 1.27 of the APA speak for themselves and require no further response. Further responding to the allegations set forth in paragraph 42, Respondent answers that what was an Exhibit A in Docket No. W- 1300, Sub 9 is not an instrument to which reference can be made to establish connection fees
Complainants should pay for interconnection.
43. In response to allegations set forth in paragraph 43 of the complaint, Respondent answers that the provisions of Section 1.32 of Briar Chapel Utilities' agreement to acquire the sewer system speak for themselves and require no further response. Respondent admits that Exhibit J is a true and accurate copy of the BCU Agreement. Further responding to the allegations set forth in paragraph 43, Respondent answers that the agreement referred to therein in Docket No.W-1230, Sub 0 is not an instrument to which reference can be made to establish connection fees
Complainants should pay for interconnection.
44. In response to allegations set forth in paragraph 44 of the complaint, Respondent answers that the terms of the BCU agreement speak for themselves and require no further response. Further responding to the allegations set forth in paragraph 44, Respondent answers that the agreement referred to therein in Docket No. W-1230, Sub 0 is not an instrument to which reference can be made to establish connection fees
Complainants should pay for interconnection.
45. In response to allegations set forth in paragraph 45 of the complaint, Respondent answers that the terms of the BCU agreement speak for themselves and require no further response. Further responding to the allegations set forth in paragraph 45, Respondent answers that the agreement referred to therein in Docket No. W-1230, Sub 0 is not an instrument to which reference can be made to establish connection fees
Complainants should pay for interconnection.

46. In response to allegations set forth in paragraph 46 of the complaint, Respondent answers to that ONS claims that the appropriate way to calculate REUs upon which to determine connection fees to Complainants is through reference to the wastewater collection system extension permit authorized by Division of Water Resources of the state and that Exhibit K is it true and correct copy of Respondent's letter to Complainants dated March 16, 2023. Unless admitted the allegations contained in paragraph 46 of the Complaint are denied.
47. In response to allegations set forth in paragraph 47 of the complaint, Respondent admits the allegations set forth therein.
48. In response to allegations and set forth in paragraph 48 of the complaint, Respondent admits that Knoll has two 2 inch meters and two 3 inch meters. Unless thus admitted, the remaining allegations set forth in paragraph 48 are denied.
49. In response to allegations set forth in paragraph 49 of the complaint, Respondent admits the allegations set forth therein.
50. In response to allegations set forth in paragraph 50 of the complaint, Respondent has insufficient information to form a belief as to whether the Liberty Senior project has advanced to the point that any meter has been installed and therefore denies this factual allegation. The remaining allegations set forth in paragraph 50 are denied.
51. In response to allegations set forth in paragraph 51 of the complaint, Respondent denies the allegations set forth therein.
52. And response to allegations set forth in paragraph 52 of the complaint, Respondent answers that the terms of Appendix A of the Sub 71 order speak for themselves and require no further response.
53. In response to allegations set forth in paragraph 53 of the complaint, Respondent admits the allegations set forth therein.
54. In response to allegations set forth in paragraph 54 of the complaint, Respondent admits the allegations set forth therein.

55. In response to allegations set forth in paragraph 55 of the complaint, Respondent admits that the monthly total is based on 270.6 REU. Unless otherwise admitted the remaining allegations set forth in paragraph 55 of the complaint are denied.
56. In response to allegations set forth in paragraph 56 of the complaint, Respondent admits the allegations set forth therein.
57. In response to paragraph 57 of the complaint, Respondent admits that in Complainants' Exhibit J on March 16 2023 Respondent denied all claims and refused to provide a refund to either Complainant. Respondent did so by submitting a nine page letter setting forth in detail the reasons Complainants' allegations are without merit.
58. In response to allegations set forth in paragraph 58 of the complaint, Respondent admits that on March 29, 2023 Complaints' counsel, in abbreviated fashion, reiterated the demand for a refund. Respondent denies that this letter was an attempt to resolve the dispute in good faith. Further responding, Respondent answers that Complainants failed to address most of the reasons set forth by Respondent in its March 16, 2023 letter as they have again failed to do so in their complaint. Unless otherwise admitted or responded to, the allegations set forth in paragraph 58 are denied.
59. In response to allegations set forth in paragraph 59 of the complaint, Respondent realleges and incorporates herein its responses to paragraphs 1 through 58.
60. In response to allegations set forth in paragraph 60 of the complaint, Respondent answers tht these allegations contain an abbreviated recitation of a general statute. The statute speaks for itself and requires no further response.
61. Response to allegations set forth in paragraph 61 of the complaint, Respondent denies the allegations set forth therein.
62. In response to allegations set forth in paragraph 62 of the complaint, Respondent admits that ONS charged Blue Heron \$4,000 per REU. Respondent denies that the provisions of the Commission's order in Docket No. W-1300, Sub 9 have any application to the resolution of the complaint in this docket. In response to the allegations that ONS formed a binding contract with Blue Heron to provide sewer connection services to Blue Heron's Knoll apartment complex in the Briar Chapel service area, Respondent admits

that it entered into an agreement to provide interconnection services to Blue Heron's apartment complex, which it has fulfilled but denies that it did so on the basis of charging \$1500 per REU.

63. In response to allegations set forth in paragraph 63 of the complaint, Respondent answers that in accordance with the Commission's order in Sub 71 Respondent invoiced Complaint for \$4,000 per REU. The remaining allegations set forth in paragraph 63 are denied.
64. In response to allegations set forth in paragraph 64 of the complaint, Respondent admits that it did not charge Complaints pursuant to any provisions in the Commission's order in Sub 9 or the APA filed in that docket. The remaining allegations set forth in paragraph 64 are denied.
65. In response to allegations set forth in paragraph 65 of the complaint, Respondent denies the allegations set forth therein.
66. In response to allegations set forth in paragraph 66 of the complaint, Respondent denies the allegations set forth therein.
67. In response to allegations set forth in paragraph 67 of the complaint, Respondent realleges edges and incorporates its responses in proceeding paragraphs 1 through 66.
68. In response to allegations set forth in paragraph 68, Respondent denies the allegations set forth therein that it has violated this Commission rule. Responding further, the provisions of Rule R10-20 speak for themselves and require no response. In addition, the provision of services to which Complainants have asked to receive is interconnection and thereafter sewer collection and treatment. Those services were provided when the rates set forth in the Sub 71 order were in place. ONS has charged the compensation required by Commission order at the time provided.
69. In response to allegations set forth in paragraph 69 of the complaint, Respondent realleges and incorporates herein the proceeding responses to paragraphs 1 through 68.
70. In response to allegations set forth in paragraph 70 of the complaint, Respondent answers that the terms of the Commission Rule R10-17(a) speak for themselves and require no further response. Responding further, at the time the Blue Heron application

was submitted, ONS had pending before the Commission an application to increase its connection fees. ONS would have been remiss and would have misled Blue Heron had it quoted the requested but not yet approved connection fees that would have been in effect when Blue Heron would have been in a position to interconnect. This filing was a matter of public record and a matter of widespread knowledge within the Briar Chapel service area. ONS would have been negligent had it quoted connection rates that would in all likelihood not be in effect when Blue Heron would be in a position to interconnect and that would not have applied at the date of interconnection. To the extent ONS had quoted the Sub 9 connection fee rates, leading Blue Heron to assert, as it does without such representation, that Blue Heron would be entitled to the outdated and nonremunerative rate, and were Blue Heron to be successful in that assertion, ONS's end use customers would have been injured because it would then become necessary to increase end use usage rates to offset the unjustified shortfall. Responding further, the short delay in quoting the anticipated and approved Sub 71 rate has resulted in no injury to Blue Heron. Irrespective of any quote at the exact time ONS accepted the application to assist Blue Heron in proceeding with its project, the Commission shortly thereafter approved new rates. A rate quoted by a utility is always subject to change through Commission order. This is not a situation where had Blue Heron known that the connection fees were to increase it could have gone elsewhere and obtained its sewer services from another supplier. Concepts such as unfair trade practices and bait and switch are concepts that apply in competitive market contexts and are not applicable in this regulated utility setting and are not practices with which this Commission has jurisdiction to provide redress. Any remedy for a failure to comply with this Commission rule would not include providing an applicant with the ability to interconnect at a rate different from that approved by the Commission at the time interconnection took place.

71. In response to allegations set forth in paragraph 71 of the complaint, Respondent answers that it accepted Blue Heron's application to provide sewer service on March 23, 2021 but denies that it did so by committing to Complainant that the rate per

connection would be a rate other than that approved by the Commission in Docket No. W-1300, Sub 71.

72. In response to allegations set forth in paragraph 72 of the complaint, Respondent denies the allegations set forth therein.
73. In response to allegations set forth in paragraph 73 of the complaint, Respondent denies the allegations set forth therein.
74. In response to allegations set forth in paragraph 74 of the complaint, Respondent realleges and incorporates herein the preceding responses to paragraphs 1 through 73.
75. In response to allegations set forth in paragraph 75 of the complaint, Respondent denies the allegations set forth therein.
76. In response to allegations set forth in paragraph 76 of the complaint, Respondent admits that it charged Liberty Senior \$4,000 per REU and that on April 5, 2021 Liberty Senior solicited a commitment to provide sewer connection services from ONS. Responding to the remaining allegations set forth in paragraph 76 of the complaint, a solicitation of sewer connection services from ONS is a solicitation, no more no less. With respect to the allegations addressing the Sub 9 order, the order speaks for itself and requires no further response. The Sub 9 order has nothing to do with the rates Liberty Senior is required to pay for interconnection.
77. In response to allegations set forth in paragraph 77 of the complaint, Respondent admits that on April 21, 2021 Respondent issued Liberty Senior an invoice for connection fees of \$4,000 per REU. Responding to the remaining allegations set forth in paragraph 77, Respondent denies same.
78. In response to allegations set forth in paragraph 78 of the complaint, Respondent answers that it calculated REUs in accordance with the Commission's order in Sub 71 and denies that it bore any responsibility to Liberty Senior under the Commission's order in Sub 9 or any provision of the APA addressed in that order.
79. In response to allegations set forth in paragraph 79 of the complaint, Respondent is without sufficient information to form a belief as to any meter with respect to the Liberty Senior project and therefor denies same. Further responding to the remaining

allegations set forth in paragraph 79, Respondent answers that the APA addressed in Sub 9 is not an instrument upon which Liberty Senior can rely in demanding services from Respondent.

80. In response to allegations set forth in paragraph 80 other complaint, Respondent denies the allegations set forth therein.
81. In response to allegations set forth in paragraph 81 of the complaint, the allegation addresses the Commission rule. The terms of the rule speak for themselves and require no further response. The allegation contains no factual allegations and no further response is required. Responding further, Respondent denies that it violated the terms of the rule.
82. In response to allegations set forth in paragraph 82 of the complaint, Respondent admits that Liberty Senior solicited sewer connection services from ONSWC on April 5, 2021 , expressly asking, "What do we need to do to pay the \$1,500 unit connection fee?" Further responding to allegations set forth in paragraph 82, Respondent denies those allegations.
83. In response to allegations set forth in paragraph 83 of the complaint, this is not an allegation but a request for relief and requires no response.
84. In response to allegations set forth in paragraph 84 of the complaint, Respondent realleges and incorporates herein its responses to proceeding paragraphs 1 through 83.
85. In response to paragraph 85 of the complaint, Respondent admits the allegations set forth therein.
86. In response to allegations set forth in paragraph 86 of the complaint, Respondent answers that the terms of the Commission's Sub 71 order speak for themselves and require no response.
87. In response to allegations set forth in paragraph 87 of the complaint, Respondent admits that ONS's monthly charges of \$11,445.53 are based on 270.58 REU, consistent with the number of REU cited in ONS's connection invoice to Blue Heron.
88. In response to allegations set forth in paragraph 88 of the complaint, Respondent answers that the terms of the Commission's order in Sub 9 and the APA addressed

therein speak for themselves and require no response. Responding further, such order and APA provide no basis for determining connection fees or REUs that Complainants must pay to receive interconnection.

89. In response to allegations set forth in paragraph 89 of the complaint, Respondent answers that the Commission's order in Sub 9 and the APA addressed therein provide no basis for determining connection fees or REUs that Complainants must pay.
90. In response to allegations set forth in paragraph 90 of the complaint, Respondent denies the allegations therein.
91. In response to allegations set forth in paragraph 91 of the complaint, Respondent admits that it has denied Blue Heron's request for any refund. The remaining allegations are denied.

WHEREFORE, Respondent respectfully requests that the Commission granted the following relief:

1. Enter an order dismissing the Complaint on the grounds that Complainants have failed to state a claim for relief upon which relief can be granted pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure.
2. Enter an order dismissing the Complaint of Blue Heron on the grounds that Complainant has waived its rights to the relief requested because Blue Heron has paid connection fees and usage fees properly assessed against it without making such payments under protest.
3. Enter an order dismissing the complaint of Liberty Senior because no existing case and controversy has been alleged in the complaint as to Liberty Senior and its allegations are premature and are not ripe for consideration.
4. Enter an order dismissing the Complaint on the grounds that Complainants have failed to comply with the Commission's requirements under NCUC Rules R1-5 and R1-9, which require complaints to be verified.
5. Enter an order dismissing the Complaint on the grounds that Respondent has appropriately charged Complainants under the appropriate Commission orders in effect at the time any services were provided to Complainants.

6. Enter an order ruling that connection fees and commodity fees charged Complainants have been calculated with the appropriate connection fees and billing determinants so as to minimize usage rates to end users in the Briar Chapel service area.
7. Grant such other and further relief as the Commission may find just and reasonable.

Respectfully submitted, this 12th day of June , 2023

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STATE OF ALABAMA


VERIFICATION

JEFFERSON COUNTY

John McDonald, being first duly sworn, deposes and says that he is President of Old North State Water Company, Inc, that he has read the foregoing Response, Answer and Motion to Dismiss and that the same is true of his own knowledge, except as to those matters and things therein alleged upon information and belief, which he believes to be true.

This the 12th day of June, 2023.

Old North State Water Company, Inc.

By: 

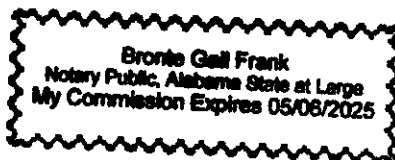
John McDonald
President

Sworn to and subscribed before me,

This the 12 day of June, 2023



Notary Public



CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing RESPONSE, MOTION TO DISMISS, AND ANSWER was duly served upon parties of record either by depositing same in a depository of the United States Postal Service, first class postage prepaid, or by electronic delivery.

This the 12th day of June 2023

Craig D. Schauer
Christopher B. Dodd
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COUNSEL FOR RESPONDENT

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

Docket No. W-1300, Sub 92

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	
Blue Heron Asset Management, LLC and)	
Liberty Senior Living, LLC,)	
Complainants,)	RESPONSE,
)	MOTION TO DISMISS,
)	AND ANSWER
v.)	
)	
Old North State Water Company, Inc.)	
Respondent)	

NOW COMES Respondent, Old North State Water Company Inc. ("ONS" or "Respondent") by and through undersigned counsel, and pursuant to Rule R1-9 of the North Carolina Utilities Commission, responds to the claims asserted by Complainants, Blue Heron Asset Management, LLC ("Blue Heron") and Liberty Senior Living, LLC ("Senior Living") collectively ("Complainants") by moving to dismiss the complaint, and answering the enumerated allegations as follows, and responds to the allegations of the Complainants set forth in their complaint of May 26, 2023.

The correct name, address, and electronic mailing address of Respondent is:
Old North State Water Company, Inc.
3212 6th Avenue South, Suite 200
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jmcdonald@integrawater.com

The correct name, address and electronic address of Respondent's attorney is:
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INTRODUCTION

ONS acquired the Briar Chapel WWTP and collection system from Briar Chapel Utilities LLC, the operating subsidiary of NNP-Briar Chapel, LLC (“NNP”). NNP is the developer of the Briar Chapel subdivision. The system was developer owned. ONS acquired the system from the developer subsidiary through an Asset Purchase Agreement that resulted in a zero rate base, all in accord with NCUC policy of minimizing rate base and usage rates, ultimately benefiting end use customers. The APA used a commonly relied upon financing device of repaying the developer with subsequently received the connection fees. The connection fees were agreed upon in the APA by the contracting parties and were not based on any other particular cost of service principles. Receipts from the connection fees were to repay NNP for its investment in the sewer system. The NCUC approved the acquisition and acknowledged the \$1,500 connection fee without further cost of service justification.

ONS assumed the obligation to serve structures constructed in the future by builders in the Briar Chapel service area such as Blue Heron and Liberty Senior when it acquired the system, and ONS assumed the future obligation to expand the WWTP to be prepared to make service available to structures built by those builders through interconnection. This ultimately required an expansion of the WWTP by an additional 250,000 gpd.

The APA with NNP would not have provided funds to serve demand not caused by NNP’s initial development activities as anticipated in the APA.

In anticipation of expansion, in 2021 ONS obtained engineering information and costs and filed for new connection fees to provide funds through CIAC from builders in the position of Blue Heron and Liberty Senior. ONS relied upon the cost of service calculations to support its request of \$4,000 per REU. The timing of the application was such as to have the new rates in effect when ONS was called upon to interconnect builders such as Blue Heron and Liberty Senior. The utility service to be provided in exchange for the connection fees was interconnection of collection pipes.

Blue Heron and Liberty Senior acquired property and undertook steps to build structures in Briar Chapel knowing full well their property was in the ONS service area and ONS had an exclusive right to serve without competition but also the obligation to serve the Blue Heron and Liberty Senior properties on terms approved by the NCUC. Had Blue Heron and Liberty Senior undertaken proper due diligence they would have learned that expansion of the WWTP would have been required, and builders such as Blue Heron and Liberty Senior would have been looked to for funding at a rate based on the cost of the expansion.

Complainants bought property and apparently undertook construction without such due diligence and without communication with ONS or regulators to determine what contribution would be expected.

After Blue Heron was well underway but well before it would need interconnection it applied to ONS for a commitment to provide service. ONS did not solicit through word or deed an application from Blue Heron. Blue Heron apparently needed evidence of willingness to serve to obtain authority to proceed from Chatham County, for example. ONS accepted the application but told Blue Heron the invoice for connection fees would be conveyed in the future. Blue Heron accuses ONS of a bait and switch. Ostensibly, the bait is to accept the unsolicited application for service soon after Blue Heron submitted it. Blue Heron had no choice for an alternative provider of sewer service. ONS extended no bait. ONS accepted the application to assist Blue Heron in order for Blue Heron to proceed but never suggested much less promised that the connection fee rate would be \$1,500 at any time Blue Heron was ready to interconnect.

Well before Blue Heron submitted its application ONS had applied to the Commission for a connection fee increase in anticipation of the requests of builders like Blue Heron. ONS's application was based on cost of service information and a calculation of REUs that would provide appropriate funding. The ONS application was calculated to maximize CIAC and reduce rates to end users. The request was a public document. Had Blue Heron asked, ONS would have willingly informed Blue Heron that the connection fees would be at the rate the Commission would approve in the pending docket. ONS had nothing to hide. ONS would never have willingly permitted Blue Heron to pay a connection fee in advance of a distant but

unknown interconnection date at a rate negotiated with NNP many years in the past to finance facilities already in place and paid for when ONS had pending its request to increase the fees based on the costs for an expansion to serve builders like Blue Heron.

Blue Heron did not undertake appropriate due diligence and had no basis to assume it would be permitted to pay connection fees based on an APA ONS had executed with NNP that financed the original WWTP capacity that ONS would need to serve properly developed by NNP.

ONS never made any representation or took any action to lead Blue Heron to conclude that Blue Heron would be charged \$1,500 connection fees.

ONS accepted an application to assist Blue Heron in obtaining the commitment from Chatham County to proceed with the project already well underway. By so doing ONS provided assurance that when and if Blue Heron's project was completed, wastewater capacity and service would be available at the time of needed interconnection.

The date of interconnection establishes the time the rate for connection fees is determined. Had ONS charged Blue Heron the connection fees and had Blue Heron never completed the project and never received interconnection, ONS would have never earned the connection fees, and Blue Heron would have been entitled to a refund. Had ONS quoted a charge for connection fees at the time it accepted the application and had Blue Heron not completed the project and not received interconnection, ONS would not have been permitted to collect the connection fees at any quoted rate. Had ONS quoted a connection fee of \$4,000 per REU and had Blue Heron delayed interconnection until the NCUC in the meantime had approved a higher connection fee, Blue Heron would have been required to pay the subsequently approved increased fee.

ONS knew that Blue Heron was far from being prepared to interconnect at the time the application was submitted. ONS told Blue Heron that it would provide an invoice at a later time. ONS did so anticipating that the NCUC would rule upon and hopefully approve the pending request to set the connection fee at \$4,000 per REU that was calculated to finance the 250,000 gpd expansion, part of which would be needed for the Blue Heron project to proceed.

In anticipation of serving property such as that on which Blue Heron was constructing its apartment complex, ONS sought an increase in connection fees but sought no increase in waste water usage fees. Had ONS not sought and had the NCUC not approved the connection fees that would have served as CIAC to expand the WWTP, the costs ONS would have incurred to make the expansion would require recovery of those costs through usage rates. One way or the other, Blue Heron and those receiving wastewater services from property on which Blue Heron was building facilities would have to pay for the expansion. Regulated public utilities charging rates based on a rate base/rate of return formula regularly are criticized for padding the rate base to increase profits. Here, ONS is seeking connection fees as CIAC that reduce the rate base and minimize rates.

In contrast to unjustified and ever evolving allegations by Blue Heron that ONS has engaged in deceptive trade practices and a bait and switch, has violated General Statutes and Commission rules, ONS has followed Commission orders based upon well established and approved practices that minimize rate base and minimize rates that end use consumers will be charged over time. Blue Heron is being charged what the NCUC has approved and what Blue Heron should pay as a builder in the ONS Briar Chapel service territory. If Blue Heron, through lack of foresight and through improper due diligence, cannot charge those who rent apartments in its project the rates Blue Heron had hoped so as to maximize its profits due to increased costs, Blue Heron has only itself to blame.

Liberty Senior is even unable and does not assert that it has a contract to receive interconnection. Liberty Senior inquired as to when it could obtain interconnection at \$1,500 per REU. Liberty Senior did not submit any application for interconnection until after the Commission approved the increase in connection fees.

Blue Heron and Senior Liberty are not privity to nor a successor in interest to previous asset purchase agreements between NNP and ONS. While there has been a transfer of the facilities serving wastewater services in the Briar Chapel service area, that transfer was based upon an APA in which the rate base to the acquirer, the connection fees to be charged and the REUs serving as billing determinants for calculating the connection fees for each connection were interdependent. Each of those variables was negotiated between the seller and the

acquirer and determined the rate base in the hands of the acquirer for which the seller knew the acquirer would bear responsibility to finance in some measure through connection fees, which the acquirer agreed to collect and pass through to the seller. The NCUC approved the transfer and did not question the usage rates requested, the rate base established in the transfers or the collection fees or REUs in the APA.

Blue Heron and Liberty Senior are in a completely distinct category from the parties in the asset purchase agreement to which they refer. Blue Heron and Liberty Senior have never been an owner of any of the wastewater facilities and have made no contribution to finance any of the facilities that were in place or contemplated to be constructed as addressed in the APA and the Commission's order approving the transfer based on the APA. Nowhere in any prior orders are there decretal paragraphs or tariffs addressing how REUs are to be calculated. Prefatory language and findings of fact in orders reciting history and noting the existence of APAs and some of their terms cannot be cited as imposing requirements on the utility or consumers of its services at a time when the orders have been superseded by subsequent orders. ONS has justified the REUs through reference to DEQ requirements.

FACTUAL BACKGROUND AND CONTEXT

1. Response to Blue Heron's Claims for a Refund of Connection Fees.

With respect to Blue Heron's claim that ONS has assessed charges for sewer services in excess of those approved by the North Carolina Utilities Commission, Complainants' reading of the Commission's orders and interpretation of the law as applied to the facts are erroneous. In summary, on April 19, 2021 ONS provided an invoice to Blue Heron to pay connection fees with respect to the Perch Apartment Building project¹ pursuant to the connection fees approved by the Commission in Docket No. W-1300, Sub 71 on April 19, 2021. The invoice was submitted

¹ Blue Heron first asserted it should not be charged connection fees pursuant to the Sub 71 order by letter dated May 13, 2021 in which it referred to the project as the "Perch Apartments." Blue Heron now refers to the project as the "Knoll." ONS replied to the May 13 letter on May 20, 2021 explaining that Blue Heron would be required to comply with the Sub 71 order, making Blue Heron aware at that time as it has consistently thereafter that its excurses for objecting to do so are without merit. To this day Blue Heron persists in repeating its claims while ignoring ONS's reasons why Blue Heron's claims are invalid. Blue Heron remains unable to address much less refute ONS's arguments.

after the order of the Commission was issued. As of April 19, 2021 no interconnection to the Perch project had been made. No services pursuant to any Commission approved tariff had been provided to Blue Heron on that date. No contract exists between ONS and Blue Heron obligating ONS to allow Blue Heron to interconnect based on fees of \$1,500 per REU. Blue Heron has paid the fees as invoiced by wire transfer on August 31, 2022

Blue Heron based an initial claim in a February 28, 2023 letter that ONS bound itself to provide connection to the Perch Project at \$1,500 per REU on the following recitation:

On March 23, 2021, Blue Heron signed and submitted an application to ONSWC for the provision of sewage connection services in the Briar Chapel area. On this same date, ONSWC submitted an associated Intention to Provide Service to Chatham County. Despite receiving a completed application form and tendering the Intention to Provide Service, ONSWC told Blue Heron that it would provide an invoice for the contracted-for connection fee “at a later date.” At 3:21 pm on April 19, 2021, ONSWC provided Blue Heron an invoice for the connection fee, which used the newly established rate of \$4,000 per REU.

Blue Heron’s claim of a binding contract between ONS and Blue Heron to allow interconnection at \$1,500 per REU is based on the submittal of an application to ONS without reference to the fee per connection, which Respondent assumes Complainants allege to be a firm offer.² The Blue Heron application was submitted on March 23, 2021, 15 days after ONS filed its application with the Utilities Commission to increase the connection fees. Next, Blue Heron referred to the “tendering” by ONS to Chatham County of an “Intention” to Provide Service. By this Respondent assumes Blue Heron asserts that this is the acceptance of the offer of Blue Heron to accept or receive interconnection at the rate of \$1,500 per REU even though that rate is not set forth in the “offer” nor referred to in the Intention. No connection fee was submitted to ONS with the Application. Any dealings between ONS and Chatham County would

² The introductory paragraph of the Application, Customer # 7186 BC states: Consumer agrees to promptly pay the application fee, service fees, deposits, late fees, after-hour fees, processing fees and all other charges and fees of Utility (“Charges”) at Utility’s standard rates as set by Utility now or at any future time, and to comply with Utility’s rules, regulations and policies, as modified from time to time by Utility (“Rules”). Utility’s obligation to provide water/wastewater service is subject to (i) Utility’s acceptance of this application and (ii) the provision of any water or sewer license, franchise, easement, right-of-way or other agreements that may be between Utility and any governmental authority or other person. Utility shall have exclusive right to furnish the service(s) to the service area. Consumer will read and comply with the water and wastewater policy manual available at www.integrawater.com or upon request from Utility at the address shown. The signed application and applicable charges must be submitted to Utility at the address set forth and Consumer further agrees that: . . .

not address the rate or fee Blue Heron would pay ONS for the provision of utility service. ONS would provide no sewerage service to Chatham County. Blue Heron fails to explain how the “tendering” of the “Intention” document to one party, the County, is an acceptance of an offer made by another party, Blue Heron, to pay for interconnection at an identified rate not specified in either document. Nor does Blue Heron explain how an “Intention” would constitute an acceptance even if it were to Blue Heron, the party Blue Heron apparently maintains to have made the offer and even though the Intention does not mention \$1,500 per REU. It is unclear, based on Blue Heron’s recitation, when exactly this allegedly binding contract at the rate it advocates became effective.

No explanation is provided as to how an “intention” constitutes a binding obligation to do anything for any party.

Next Blue Heron cited selected provisions of N.C. Gen. Stat. § 62-139(a) in support of the assertion that ONS has failed to charge fees for services as authorized by the North Carolina Utilities Commission. Blue Heron omitted provisions of the subsection of the statute with ellipses that are pertinent here. The complete subsection is set forth below:

No public utility shall directly or indirectly, by any device whatsoever, charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered by such public utility than that prescribed by the Commission, nor shall any person receive or accept any service from a public utility for a compensation greater or less than that prescribed by the Commission.

Emphasis added.

The “service rendered” here is interconnection. It is interconnection through facilities that enable sewage to be discharged from the building(s) constructed by Blue Heron to be transmitted through a sewerage collection system to sewage treatment facilities owned and operated by ONS. No such interconnection facilities were in place on the date Blue Heron submitted what Blue Heron designates as an offer, March 23, 2021, or the unidentified date of the receipt of the Intention to Chatham County. In fact, Blue Heron was aware it could not interconnect its project to the Briar Chapel sewer system. Mr. Kevin Wade with Blue Heron stated in an email dated March 2, 2022, “we'd like to get the connection fee settled, but need confirmation the sewer is available prior to making any payment.” In addition, Blue Heron knew the permit authorizing it to connect required that the SD East lift station and force main

be completed prior to Blue Heron being able to connect. The FTSE was issued July 13, 2020 and stated explicitly that the force main and pump station had to be complete. Blue Heron knew the lift station was not completed in March, and, due to construction delays, the lift station was not completed until July of 2022. Blue Heron also acknowledged it had construction defects and debris in its gravity sewer that had to be corrected prior to making the connection. This is acknowledged in an email dated May 18, 2022 and as late as August 6, 2022 by Blue Heron's contractor (Evolve).

Next, Blue Heron maintained that a "sale" of sewer services took place between ONS and Blue Heron on March 23, 2021. This appears to be an alternative theory from the argument that a contract to provide interconnection at \$1,500 per REU occurred on or about March 23, 2021 based in part on actions by Chatham County. Technically speaking, an interconnection of pipes through which sewage flows from an apartment building is made with the collection system owned and operated by a sewer utility is not a sale as the term sale is commonly used with respect to public utility regulation and with respect to utility fees and charges. A sale commonly refers to the provision of a commodity, an obligation to make a commodity available or receipt of a commodity, such as wastewater by a sewer utility, by the public utility from the end use customer. Even if one were to attempt to classify an interconnection as a sale, no interconnection occurred on March 23, 2021 or April 19, 2021. It would have been impossible to make an interconnection on those dates because facilities were not in place to enable an interconnection to be made. Substantial delays occurred. In order to make the interconnection Blue Heron had to clean and inspect the line. The line had numerous construction defects and debris in it.

Under the Blue Heron first theory the contract is formulated when Chatham receives the Intention. Under the second inconsistent theory the contract is formulated when ONS accepts the Blue Heron application. Under the second theory the action of Chatham County is not mentioned.

As stated, under this second theory Blue Heron argued that service was provided when ONSWC accepted the Blue Heron application. This is not a case where ONS is refusing to make the interconnection with Blue Heron or to provide the other sewer services for which the

application was submitted. The interconnection has been made and sewerage has been discharged, accepted and processed. The dispute between the parties addresses the fee to be paid in exchange for the contemplated interconnection due on or before the interconnection was made and charges for the collection and treatment services addressed in the application were provided. The application and ONS's acceptance of it are not the determinative factors dictating the fee to be paid. That determination rests with the North Carolina Utilities Commission. The North Carolina Utilities Commission establishes the fee, and it is due on or before the date the services covered by the application are rendered.

Complainant earlier had contested the requirement by ONS that they pay the invoiced connection charge. Therefore, Complainants had contested the assessed fees in advance of its payment of the fee. Complainants had plenty of time to take their complaints to the Utilities Commission prior to making the payment or to make the payment under protest. They did neither. Complainants have waived their right retroactively to contest payments of the connection fee or the subsequent charged commodity charges. Where, after expiration of an old contract between a city and the electric company regarding electric current, and during deadlock regarding terms to be included in the new contract, the company continued to bill the city monthly in accordance with rates prescribed by the schedule on which the old contract was based, and the city continued to make payments in accordance with bills rendered, payments made without protest on a month-to-month basis constituted at each month an election to pay on the basis of the old schedule and a waiver as to that month of the right to any contract under the company's new schedule containing lower rates. *City of High Point v. Duke Power Company*, 120 F.2d 866 (4th Cir. 1941). Where, after expiration of an old contract between a city and the electric company regarding electric current and during deadlock regarding terms to be included in the new contract, the company rendered monthly statements based on rates contained in the old contract, the city, which, with full knowledge of the facts, paid bills as rendered, could not recover any part of the payments on the ground that the city should have been charged lower rates contained in the company's new schedule. *City of High Point v. Duke Power Company*, 34 F. Supp. 339, affirmed 120 F.2d 866 (4th Cir. 1941).

While Complainants have and continue to attribute to ONS clandestine and underhanded motives, the request for the \$4,000 per REU was pending before the Commission well before Blue Heron submitted its application and Liberty Senior made any inquiry to ONS as to a rate for interconnection and before the issuance of the order of approval. The date on which the Commission issued its approval was out of ONS's control. The application had been reviewed by the Public Staff and approved by and submitted by that agency to the Commission for the Commission's approval. The requested increase was to finance system improvements, an expansion of the Briar Chapel WWTP by 250,000 gpd, that would be needed to serve Blue Heron, Liberty Senior and other consumers. All of this was through public submissions and was widely known in the Briar Chapel subdivision. Customers in the Briar Chapel area were aware of the submission and on March 19, 2021 communicated with the Commission in support, stating that "the new development which is driving these upgrades should help offset the capital costs for this upgrade with an increase in the connection fees from \$1,500 to \$4,000 per residential equivalent units (REUs)."

Blue Heron insists that it has a binding contract with unambiguous terms with ONS to pay \$1,500 per connection based on the Commission order in Sub 9. However, even Blue Heron is forced to admit that it is unable to argue that that order directs unambiguously that the result applied to the Blue Heron produces the \$69,000 bill Blue Heron asserts to be the correct fee. Blue Heron argues that according to a chart in the APA with NNP REUs for the Blue Heron project are 46, producing a fee of \$69,000. However, Blue Heron argues, "Alternatively, should REU be computed based on design flow, the 51,1450 GPD for Blue Heron's development would be divided by 250 GPD-- per the APA and the BCU agreement-- resulting in 204.6 REUs. This would result in a fee of only \$306,840 (204.6 REUs x \$1,500)." February 28, 2023 letter page 5, fn. 2. Blue Heron cannot claim it has a binding contract with unambiguous terms as to the rate for connection fees when at the same time it argues that the terms as to the compensation called for are subject to different interpretations.

As recited in the Company's application in Docket No. W-1300, Sub 71, the justification for the increase in the connection fee to \$4,000 per REU is to provide funds from those like Blue Heron seeking to interconnect to the Briar Chapel sewer system for expansion of the sewage treatment plant in order to meet the demand anticipated from interconnection with those consumers. "The primary reason for the increased wastewater connection fee is to aid in recovery of cost of the facility expansion and provide service for new development."

Connection fees such as those at issue constitute contributions in aid construction.

Contributions in aid of construction not passed through to a seller constitute reductions to rate base and therefore reduce the rates end users in the Briar Chapel development will pay for sewage services they receive. Contributions in aid of construction, by reducing the rate base, reduce the return ONS is entitled to receive. Therefore, it is not to the financial advantage of ONS to increase the connection fees. These facts refute the claim that ONS's motives were as Blue Heron asserts.

If any doubt existed as to whether the connection fee Blue Heron and Liberty Senior should pay is \$1,500 per REU or \$4,000 per REU, common sense and fairness support the higher fee justified by the need to expand the facilities for the benefit of consumers ultimately residing in the Blue Heron building.

2. Response to Blue Herons' Claims That REUs Should Be Calculated Differently.

Complainants take issue with the formula ONS has used to calculate the REUs upon which it has based its invoiced connection fees to Blue Heron and Liberty Senior. As explained as early as in the ONS's letter of May 20, 2021, addressing this same complaint in the May 13, 2021 letter on behalf of Blue Heron, ONS explained the basis for the calculation. This explanation is repeated here:

The appropriate way to calculate residential equivalent units is through reference to the wastewater collection system extension permit authorized by the Division of Water Resources of the State. Based on the July 13, 2020 letter to BHBC Apartments, LLC, DWR granted permission for the construction and operation of approximately 444 linear feet of eight inch gravity sewer to serve 183 one and two-bedroom apartments, 17 three bedroom apartments and a clubhouse as part of the Perch project, and the discharge of 51,140 gallons per day of collected domestic wastewater into Old North State's existing Briar Chapel sewerage collection system. This construction permit controls the amount of

wastewater Old North State is responsible to process and forms the correct gpd on which to calculate the connection fees.

Briar Chapel has received from DEQ a flow reduction so that its capacity to treat wastewater is now calculated based on a gallons per bedroom of 189 gallons per day. Old North State's REU is therefore 189 gpd. Old North State divided the 51,140 gpd by 189 gpd = 270.58 x \$4000 = \$1,082,328.04. Were REUs calculated in the manner you suggest, wastewater at some point would exceed the capacity of the sewage treatment plant as permitted and violations likely would occur. Were other potential entities seeking connection to calculate REUs the way you suggest, the capacity very well would be exceeded in short fashion.

As stated above, Blue Heron apparently maintains under at least one of its theories that the connection fee should be \$69,000. Alternatively Blue Heron argues that the fee should be \$306,840. If Blue Heron has a binding contract to pay a connection fee, the fee is either \$69,000 or \$306,840. If the terms are unclear there is no binding contract. The \$69,000 is based on 46 REUs x \$1,500. Blue Heron bases the 46 REUs on the fact that Blue Heron has two 2 inch meters and two 3 inch meters. Blue Heron maintains that it is appropriate to look back many years to 2014-15 at the acquisition of the Briar Chapel system by ONS addressed in Docket No. W-1300, Sub 9 or to the order granting a CPCN to ONSWC's predecessor in 2009. Also, the reference to the \$1,500 connection fee is from the 2014 Asset Purchase Agreement between Briar Chapel Utilities, LLC and ONS. ONS's services to Blue Heron are provided under the terms of the Commission order of April 19, 2021 in Docket No. W-1300, Sub 71, not the earlier orders Blue Heron references.

Blue Heron examines calculations of purchase price and recites agreements between the contracting parties with respect to connection fees to be charged if approved by the Commission in Docket No. W-1300, Sub 9. As explained above, the \$4,000 per REU and the number of REUs are calculated and determined based on requirements existing in 2021 and thereafter, those relied upon by the Commission in Docket No. W-1300, Sub 71, and not those to which Blue Heron refers. At the time of the 2014 Asset Purchase Agreement and the transfer addressed in Docket No. W-1300, Sub 9 no wastewater collection system extension permit authorized by the Division of Water Resources of the State to BHBC Apartments, LLC had been granted.

Furthermore, the use of connection fees in the context of the acquisition and sale of sewer facilities serves a completely different function from the use of connection fees based on cost of service principles assessed by a sewer utility to a new builder in its service area to finance the construction of post-acquisition improvements to serve customers. In the acquisition and sale context connection fees are used as financing devices to facilitate the sale. The Commission has so held. As Blue Heron recited in its February 28, 2023 letter at the bottom of Page 3: “The Sub 9 order states that ‘[t]he purchase price for the Briar Chapel wastewater utility system under the APA is \$1,500 per residential equivalent unit (REU) for each new connection and the future expansion. . . .’” In Sub 9 the seller was Briar Chapel Utilities, LLC. The developer of Briar Chapel is NNP-Briar Chapel, LLC. The developer owned the seller. The connection fees negotiated by the parties to the APA of \$1,500 per REU were to be passed through to the developer, not retained by the buyer. Moreover, any discussion of a formula or chart to calculate REUs through which the buyer would pay the seller addressed what the parties negotiated then based on facts existing at that time. The 250 gpd x the four meters used to calculate the REU would be insufficient for a fee to Blue Heron. In addition, the chart in section 1.27(b) of the APA also is based on 250 gpd x the increased size of the meters for nonresidential buildings. The chart assumes one meter per nonresidential building, not four meters to a multi-unit residential building as Blue Heron has installed. “If there is a water and/or wastewater meter”

As the connection fees to be collected by the buyer after the transfer were to be conveyed back to the seller as part of the compensation for the sale, the collection fees so collected at the \$1,500 rate did not constitute net CIAC, as is the case with the \$4,000 per REU charged Blue Heron as approved by the Commission in Docket No. W-1300, Sub 71. The \$1,500 was a negotiated fee and based on no particular cost of service justification.

Blue Heron has asserted that “the APA not only defines REU with a computational method, but it also references and incorporates the computation of REU as approved by the Commission in Docket No. W-1230, Sub 0.” The Commission’s April 20, 2015 Recommended Order and its final Order in Sub 9 contain no reference to any method through which to compute a nonresidential REU much less an REU for a multi-unit residential structure. The order makes no

reference to section 1.27(a) or (b) of the October 31, 2014 Asset Purchase Agreement. As admitted in Complainant's February 28, 2023 letter, "the Sub 9 Order does not explicitly state how to compute the REU . . ." The Sub 9 order does not address computation of REUs, explicit or otherwise.

The Briar Chapel developer, NNP-Briar Chapel, was to pay for all installation costs of the collection system extensions and, if necessary, the additional upset pond, effluent storage pond, and reuse spray irrigation facilities, and NNPP-Briar Chapel was to convey those components to ONSWC at no cost. The \$1,500 connection fee calculated by the REU method set forth in the Asset Purchase Agreement was a way to compensate the developer and was part of the purchase price. Just as in Docket No. W-1300, Sub 71 the connection fee established in that docket is to finance identified system improvements, the expansion of the WWTP with an identified cost and with an expectation of the demands from structures like the Blue Heron apartment building, the establishment of the REU and the connection fee in Sub 9 were based on financing a different set of improvements at a different price needed to serve existing and a different set of new customers.

The charges to Blue Heron and Liberty Senior for connection of \$4,000 per REU and the calculation of the REUs as set forth above were formulated to recover as CIAC costs for a defined system improvement. If either component of the connection fee to Complainants is modified as Complaints asserts, the anticipated CIAC will be far lower than that anticipated and relied upon to fund the needed improvements. The Commission's justification for approving the \$4,000 per REU would be nullified if the calculation for REU argued for by Complainants were permissible. The correct calculation for REUs must be as invoiced through reliance on up-to-date demand measurements for the particular Blue Heron or Liberty Senior project and the cost of the improvements for which the calculations were made.

In summary, Blue Heron connected its apartment building to the collection system of ONS long after the Sub 71 order took effect. Blue Heron paid a connection fee of \$4,000 per REU as required in the Sub 71 order. The REU upon which Blue Heron paid the connection fee was 189 gpd as invoiced by ONS. In spite of this, Blue Heron claims that at the time of the interconnection and at the time of its payment of the fee it had a binding contract to pay a fee

of \$1,500 per REU. It claims that it had a binding contract to pay a fee based upon an REU of 46. Blue Heron claims it had a binding contract to pay a connection fee in reliance upon an order that was no longer in effect at the time of the interconnection or at the time of the payment of the fee. The binding contract, which Blue Heron asserts it had with ONS, allegedly is based upon an order that nowhere made any reference whatsoever to any rate schedule with a REU of 46 or any formula or chart from which 46 REU should be computed. No such binding contract existed at the time of interconnection, at the time of the payment of the fee or at any time prior thereto.

The Liberty Senior claim repeats the Blue Heron claims but without any claim to a binding contract.

3. Response to Blue Heron's Claims for a Refund of Invoiced Service Charges.

Blue Heron asserts that it is owed a refund for the monthly usage fees it has paid to date. The reasons for rejecting that claim are the same as the reasons for rejecting the claim for a refund of the connection fee. In addition, Blue Heron cannot claim that any commitment to limit the connection fee based on the alleged contracts addressed above constrained ONS from charging the commodity charge approved by the Commission in its order in Docket No. W-1300, Sub 71 after the interconnection was made, sewerage accepted and bills submitted for services provided in arrears.

4. Response to Liberty Senior's Claims for a Reduction in Invoiced Connection Fees.

With respect to the claim by Liberty Senior, a distinguishing factors between that claim and the claim of Blue Heron is that Complainants' February 28, 2023 letter is the first claim made on behalf of Senior Liberty, and Senior Liberty has not yet interconnected, paid a connection fee or any monthly usage fees. Moreover, Liberty Senior has no valid much less a colorable claim that it has any agreement to receive interconnection based on any agreement entered into prior to the April 19, 2021 North Carolina Utilities Commission order in Docket No. W-1300, Sub 71.

The timeline with respect to ONS's correspondence with Liberty Senior is as follows: On March 19, 2021 ONS received an e-mail from Tanya Matzen with NNP-Briar Chapel that Liberty Senior Living was trying to secure permits but was not sure when construction would commence. ONS did not receive any correspondence or contact with Liberty Senior Living. On

March 19, 2021 ONS received a signed FTSE for Liberty Senior Apartments. On March 31, 2021 ONS received a phone call from Thad Moore of Liberty Senior wanting to know if Liberty Senior could purchase capacity with the current FTSE. Moore was advised that FTSE for the project was permitted at 38,150 gpd. On April 9, 2021 ONS received plans for the Briar Chapel Active Adult. On April 19, 2021 ONS informed Thad Moore with Liberty Senior Living that ONS would calculate an invoice connection fee. ONS asked for a clarification on Moore's mailing address. On April 19, 2021 ONS provided Thad Moore on behalf of Liberty Senior Living with a builder application and tap fee invoice. ONS also provided the April 19, 2021 NCUC order in Sub 71. On April 20, 2021 Thad Moore stated that Liberty Senior had prepared a financial model for the project for only \$1,500 per unit for 150 units. On April 20, 2021 ONS advised Thad Moore that the tap fee increase had been applied for several months earlier. ONS advised that the plant expansion to be recovered through the increased connection fees was driven by the commercial demands, and the Utilities Commission agreed to increase the fees accordingly. Only months later, on February 11, 2022, did ONS received construction documents from Liberty Common Skilled Nursing.

Likewise, in addition to these distinctions the justification for reducing the invoiced connection fee for Liberty Senior must be rejected for a number of the reasons set forth above justifying the rejection of the claims on behalf of Blue Heron.

MOTION TO DISMIS

Respondent moves to dismiss the complaint because, for reasons cited above, Complainants base each of their claims on the assertion that the connection fees they should pay of \$1,500 per REU are required by Commission orders and documentation predating the Commission's Order in Docket No. W-1300, Sub 71. The Sub 71 order is the only order addressing interconnection made subsequent thereto. Respondent interconnected Blue Heron's facilities after the Commission issued its Sub 71 order. Complainant, Liberty Senior, has not yet undertaken vertical construction and thus has not reached the point where an interconnection with the facilities can be made. Complainant, Liberty Senior, does not allege much less offer supporting factual evidence that it has any contract whatsoever obligating Respondent to interconnect at \$1,500 per REU. In addition, Complainants base their claims on

their assertion that billing determinants should be based on documentation and Commission orders that in no respect provide a basis or justification on legitimate cost of service principles that allow Respondent to recover costs it will incur to provide interconnection for and assess commodity charges to Complainants.

ANSWER TO ENUMERATED ALLEGATIONS

In response to the summary of its allegations set forth on pages one and two of the Complaint Respondent states: the summary does not contain numbered paragraphs but only a recitation of the allegations in the numbered paragraphs that follow it and as such requires no elaborate response. Nevertheless, Respondent answers that what Complainants characterize with hyperbolic adjectives and adverbs as a premeditated scheme to unlawfully extract millions of dollars in additional fees from its customers is in fact an invoicing of connection fees in accordance with the tariff in Respondent's schedule of tariffed fees as approved by the Commission in the order in effect when such fees would become due and owing from Complainants. Furthermore, rather than imposing a burden of end use customers, the connection fees will be used by Respondent to reduce the charges that it imposes upon end use customers over time, all in accordance with longstanding Commission policy.

1. In response to allegations set forth in paragraph 1 of the complaint, to the extent Complainants intend to allege the apartment complex is located within ONSWC's service territory, Respondent admits these allegations.
2. In response to allegations set forth in paragraph 2 of the complaint, Respondent answers that as of yet no apartment complex by the name of Inspire has been constructed in the Briar Chapel ONS service territory and therefore denies this allegation. Unless thus denied, the remaining allegations are admitted.
3. In response to allegations set forth in paragraph 3 of the complaint, these allegations identify counsel for Complainants and require no response.
4. In response to allegations set forth in paragraph 4 of the complaint, Respondent admits these allegations.

5. In response to allegations set forth in paragraph 5 of the complaint, Respondent admits the factual allegations contained therein.
6. In response to allegations set forth in paragraph 6 other complaint, Respondent admits these allegations.
7. In response to allegations set forth in paragraph 7 of the complaint, the allegations set forth therein contain a recitation of provisions of various statutes, contain no factual allegations and require no response to any facts asserted therein.
8. In response to allegations set forth in paragraph 8 of the complaint, Respondent admits the allegations contained therein.
9. In response to allegations set forth in paragraph 9 of the complaint, the allegations contained therein contain no assertions of fact and require no response thereto.
10. In response to allegations set forth in paragraph 10 of the complaint, Respondent admits these allegations.
11. In response to allegations set forth in paragraph 11 of the complaint , Respondent admits the allegations contained therein.
12. In response to allegations set forth in paragraph 12 of the complaint, Respondent answers that it lacks sufficient knowledge that the Knoll buildings have the separate water meters as alleged in this paragraph and therefore denies same.
13. In response to allegations set forth in paragraph 13 of the complaint, Respondent admits the allegations contained therein.
14. In response to allegations set forth in paragraph 14 of the complaint, Respondent admits the allegations contained therein.
15. In response to allegations set forth in paragraph 15 of the complaint, Respondent answers that the Liberty Senior project has not advanced sufficiently for Respondent to form a belief that the project has a meter and therefore denies this allegation.
16. In response to allegations set forth in paragraph 16 of the complaint, Respondent admits the allegations contained therein. Responding further, this ONS letter to Chatham County was not any correspondence to either of Complainants and did not

constitute any invitation to either apply for interconnection at any rate much less at a rate of \$1,500 or a rate based on any particular REU.

17. In response to allegations set forth in paragraph 17 of the complaint, Respondent admits the allegations contained therein. Responding further, Blue Heron initiated the submission of this application without any prompting from Respondent and without any representation or promise that Respondent was prepared to allow interconnection at \$1,500 per REU or that the REU billing determinant would be established by reference to any prior NCUC order or any Asset Purchase Agreement with another party.
18. In response to allegations set forth in paragraph 18 of the complaint, Respondent admits that the application is a standard form written by ONS and contains among other provisions language quoted by Complainant. Responding further, Respondent denies that the application Complainant submitted made any reference to much less any promise that interconnection whenever made would be at \$1,500 per REU or addressed any REU whatsoever. Respondent denies that any provisions in the application obligate Respondent to accept connection fees from Complainants other than those approved by the Commission in its 2021 order in Docket No. W-1300, Sub 71.
19. In response to allegations set forth in paragraph 19 of the complaint, Respondent admits the allegations contained therein. Responding further, Respondent's correspondence with Chatham County constituted no commitment to permit either of Complainants to interconnect at \$1,500 per REU.
20. In response to allegations set forth in paragraph 20 of the complaint, Respondent admits the allegations contained therein.
21. In response to allegations set forth in paragraph 21 of the complaint, these allegations contain allegations of law and conclusions with respect thereto and are not allegations of fact for which in a response is required. Responding further, Respondent denies that Respondent and Blue Heron created a legally binding contract for providing sewer connection services to Blue Heron at a rate of \$1500 per REU.
22. In response to allegations set forth in paragraph 22 of the complaint, Respondent admits that in an email dated March 23, 2021 Respondent informed Blue Heron that it

would provide an invoice for the connection fees at a later date and admits that Exhibit E as a true and correct copy of the March 23, 2021 email. Unless otherwise admitted, the allegations set forth in paragraph 22 are denied.

23. In response to graph 23 of the complaint, Respondent answers that this allegation describes the state of mind of Blue Heron, a subject of which Respondent has insufficient knowledge and belief and therefore denies same.
24. In response to allegations set forth and paragraph 24 of the complaint, Respondent admits the allegations contained therein.
25. In response to allegations set forth in paragraph 25 of the complaint, Respondent admits the allegations contained therein. Responding further, connections fees for which Complainants are responsible are to be calculated at the time of interconnection, which occurred only after the Sub 71 order was issued.
26. In response to allegations set forth in paragraph 26 of the complaint, Respondent admits that on April 19, 2021 after the Commission issued in its Sub 71 order (not the Sub 41 order), Respondent provided Blue Heron with an invoice for the connection fees, assessing the newly established rate then in effect of \$4,000 per REU. Respondent admits that it calculated the connection fee to Blue Heron to be \$1,082,320--approximately \$676,450 more than Blue Heron asserts it would owe if Respondent had used the rate of \$1,500 per REU that had been in effect prior to the Commission order. Respondent admits that Exhibit F is a true and accurate copy of the invoice. Unless otherwise admitted Respondent denies the allegations set forth in paragraph 26 of the complaint.
27. In response to allegations set forth in paragraph 27 of the complaint, Respondent admits the allegations contained in therein.
28. In response to allegations set forth in paragraph 28 of the complaint, Respondent denies the allegations contained therein.
29. In response to allegations set forth in paragraph 29 of the complaint, Respondent admits that on August 31, 2022 Blue Heron paid the connection fee in accordance with

the Respondent's invoice. Unless admitted, the remaining allegations set forth in paragraph 29 are denied.

30. In response to allegations set forth in paragraph 30 of the complaint, Respondent denies the allegations contained therein.
31. In response to allegations set forth in paragraph 31 of the complaint, Respondent admits that on April 1, 2021, Liberty Senior engaged in communications with Respondent regarding wastewater management services and that the emails attached to the complaint as Exhibit H are true and accurate copies thereof. Responding further, Liberty Senior's communication does not constitute a contract obligating ONS to do anything. Responding further, like Blue Heron, Liberty Senior initiated any correspondence with ONS addressing interconnection, and ONS never enticed or invited Liberty Senior to apply for interconnection at a rate of \$1,500 per REU.
32. In response to allegations set forth in paragraph 32 of the complaint, Respondent admits that Liberty Senior emailed ONS President John McDonald and that the email contained among other things: "What do we need to do to pay the \$1,500/unit connection fees associated with [Inspire]?" Responding further, this email does not constitute any contract obligating ONS to permit interconnection by Liberty Senior at \$1,500 per REU.
33. In response to allegations set forth in paragraph 33 of the complaint, Respondent denies the allegations set forth therein.
34. In response to allegations set forth in paragraph 34 of the complaint, on April 19, 2021 after the Commission had issued its order in Sub 71 increasing the tariff rate for interconnections made thereafter Respondent informed Liberty Senior that the invoice amount would be calculated on the current tap fee of \$4,000 per REU.
35. In response to allegations set forth in paragraph 35 of the complaint, Respondent admits that on April 19, 2021 after the Commission had issued its order in Sub 71, Respondent provided Liberty Senior with an invoice on which Respondent calculated the connection fee for Liberty Senior to be \$870,400, approximately \$504,620 more than

Liberty Senior asserts that it would have owed Respondent had Respondent used the rate of \$1500 per REU that had been in effect prior to the Commission's operative order.

36. In response to allegations set forth in paragraph 36 of the complaint, Respondent denies the allegations set forth therein.
37. In response to allegations set forth in paragraph 37 of the complaint, Respondent's application in Sub 9 and the Commission's order in that docket speak for themselves and require no response. Respondent denies the remaining allegations contained therein.
38. In response to allegations set forth in paragraph 38 the complaint, Respondent answers that the provisions of the Commission's order in Docket No. W-1300, Sub 9 speak for themselves and require no further response.
39. In response to allegations set forth in paragraph 39 of the complaint, Respondent answer is that provisions of the Commission's order in Docket No. W-1300, Sub 9 speak for themselves and admits that Exhibit I is a true and correct copy of the APA filed with the Commission in that docket. Respondent admits that the Sub 9 order does not state how to compute REUs. In further response, Respondent answers that the connection fees at issue in this docket are to be determined pursuant to the Commission's order in Docket No. W-1300, Sub 71 and not Docket No. W-1300, Sub 9 or any provisions therein.
40. In response to allegations set forth in paragraph 40 of the complaint, Respondent answers that the provisions of Section 1.27 of the APA speak for themselves and require no further response. Further responding to the allegations set forth in paragraph 40, Respondent answers that the APA that was an exhibit in Docket No. W-1300, Sub 9 is not an instrument to which reference can be made to establish connection fees Complainants should pay for interconnection.
41. In response to allegations set forth in paragraph 41 of the complaint, Respondent answers that the provisions of section 1.27 of the APA speak for themselves and require no further response. Further responding to the allegations set forth in paragraph 41, Respondent answers that the APA that was an exhibit in Docket No. W-1300, Sub 9 is

not an instrument to which reference can be made to establish connection fees
Complainants should pay for interconnection.

42. In response to allegations set forth in paragraph 42 of the complaint, Respondent answers that the provisions of Section 1.27 of the APA speak for themselves and require no further response. Further responding to the allegations set forth in paragraph 42, Respondent answers that what was an Exhibit A in Docket No. W- 1300, Sub 9 is not an instrument to which reference can be made to establish connection fees
Complainants should pay for interconnection.
43. In response to allegations set forth in paragraph 43 of the complaint, Respondent answers that the provisions of Section 1.32 of Briar Chapel Utilities' agreement to acquire the sewer system speak for themselves and require no further response. Respondent admits that Exhibit J is a true and accurate copy of the BCU Agreement. Further responding to the allegations set forth in paragraph 43, Respondent answers that the agreement referred to therein in Docket No.W-1230, Sub 0 is not an instrument to which reference can be made to establish connection fees
Complainants should pay for interconnection.
44. In response to allegations set forth in paragraph 44 of the complaint, Respondent answers that the terms of the BCU agreement speak for themselves and require no further response. Further responding to the allegations set forth in paragraph 44, Respondent answers that the agreement referred to therein in Docket No. W-1230, Sub 0 is not an instrument to which reference can be made to establish connection fees
Complainants should pay for interconnection.
45. In response to allegations set forth in paragraph 45 of the complaint, Respondent answers that the terms of the BCU agreement speak for themselves and require no further response. Further responding to the allegations set forth in paragraph 45, Respondent answers that the agreement referred to therein in Docket No. W-1230, Sub 0 is not an instrument to which reference can be made to establish connection fees
Complainants should pay for interconnection.

46. In response to allegations set forth in paragraph 46 of the complaint, Respondent answers to that ONS claims that the appropriate way to calculate REUs upon which to determine connection fees to Complainants is through reference to the wastewater collection system extension permit authorized by Division of Water Resources of the state and that Exhibit K is it true and correct copy of Respondent's letter to Complainants dated March 16, 2023. Unless admitted the allegations contained in paragraph 46 of the Complaint are denied.
47. In response to allegations set forth in paragraph 47 of the complaint, Respondent admits the allegations set forth therein.
48. In response to allegations and set forth in paragraph 48 of the complaint, Respondent admits that Knoll has two 2 inch meters and two 3 inch meters. Unless thus admitted, the remaining allegations set forth in paragraph 48 are denied.
49. In response to allegations set forth in paragraph 49 of the complaint, Respondent admits the allegations set forth therein.
50. In response to allegations set forth in paragraph 50 of the complaint, Respondent has insufficient information to form a belief as to whether the Liberty Senior project has advanced to the point that any meter has been installed and therefore denies this factual allegation. The remaining allegations set forth in paragraph 50 are denied.
51. In response to allegations set forth in paragraph 51 of the complaint, Respondent denies the allegations set forth therein.
52. And response to allegations set forth in paragraph 52 of the complaint, Respondent answers that the terms of Appendix A of the Sub 71 order speak for themselves and require no further response.
53. In response to allegations set forth in paragraph 53 of the complaint, Respondent admits the allegations set forth therein.
54. In response to allegations set forth in paragraph 54 of the complaint, Respondent admits the allegations set forth therein.

55. In response to allegations set forth in paragraph 55 of the complaint, Respondent admits that the monthly total is based on 270.6 REU. Unless otherwise admitted the remaining allegations set forth in paragraph 55 of the complaint are denied.
56. In response to allegations set forth in paragraph 56 of the complaint, Respondent admits the allegations set forth therein.
57. In response to paragraph 57 of the complaint, Respondent admits that in Complainants' Exhibit J on March 16 2023 Respondent denied all claims and refused to provide a refund to either Complainant. Respondent did so by submitting a nine page letter setting forth in detail the reasons Complainants' allegations are without merit.
58. In response to allegations set forth in paragraph 58 of the complaint, Respondent admits that on March 29, 2023 Complaints' counsel, in abbreviated fashion, reiterated the demand for a refund. Respondent denies that this letter was an attempt to resolve the dispute in good faith. Further responding, Respondent answers that Complainants failed to address most of the reasons set forth by Respondent in its March 16, 2023 letter as they have again failed to do so in their complaint. Unless otherwise admitted or responded to, the allegations set forth in paragraph 58 are denied.
59. In response to allegations set forth in paragraph 59 of the complaint, Respondent realleges and incorporates herein its responses to paragraphs 1 through 58.
60. In response to allegations set forth in paragraph 60 of the complaint, Respondent answers tht these allegations contain an abbreviated recitation of a general statute. The statute speaks for itself and requires no further response.
61. Response to allegations set forth in paragraph 61 of the complaint, Respondent denies the allegations set forth therein.
62. In response to allegations set forth in paragraph 62 of the complaint, Respondent admits that ONS charged Blue Heron \$4,000 per REU. Respondent denies that the provisions of the Commission's order in Docket No. W-1300, Sub 9 have any application to the resolution of the complaint in this docket. In response to the allegations that ONS formed a binding contract with Blue Heron to provide sewer connection services to Blue Heron's Knoll apartment complex in the Briar Chapel service area, Respondent admits

that it entered into an agreement to provide interconnection services to Blue Heron's apartment complex, which it has fulfilled but denies that it did so on the basis of charging \$1500 per REU.

63. In response to allegations set forth in paragraph 63 of the complaint, Respondent answers that in accordance with the Commission's order in Sub 71 Respondent invoiced Complaint for \$4,000 per REU. The remaining allegations set forth in paragraph 63 are denied.
64. In response to allegations set forth in paragraph 64 of the complaint, Respondent admits that it did not charge Complaints pursuant to any provisions in the Commission's order in Sub 9 or the APA filed in that docket. The remaining allegations set forth in paragraph 64 are denied.
65. In response to allegations set forth in paragraph 65 of the complaint, Respondent denies the allegations set forth therein.
66. In response to allegations set forth in paragraph 66 of the complaint, Respondent denies the allegations set forth therein.
67. In response to allegations set forth in paragraph 67 of the complaint, Respondent realleges edges and incorporates its responses in proceeding paragraphs 1 through 66.
68. In response to allegations set forth in paragraph 68, Respondent denies the allegations set forth therein that it has violated this Commission rule. Responding further, the provisions of Rule R10-20 speak for themselves and require no response. In addition, the provision of services to which Complainants have asked to receive is interconnection and thereafter sewer collection and treatment. Those services were provided when the rates set forth in the Sub 71 order were in place. ONS has charged the compensation required by Commission order at the time provided.
69. In response to allegations set forth in paragraph 69 of the complaint, Respondent realleges and incorporates herein the proceeding responses to paragraphs 1 through 68.
70. In response to allegations set forth in paragraph 70 of the complaint, Respondent answers that the terms of the Commission Rule R10-17(a) speak for themselves and require no further response. Responding further, at the time the Blue Heron application

was submitted, ONS had pending before the Commission an application to increase its connection fees. ONS would have been remiss and would have misled Blue Heron had it quoted the requested but not yet approved connection fees that would have been in effect when Blue Heron would have been in a position to interconnect. This filing was a matter of public record and a matter of widespread knowledge within the Briar Chapel service area. ONS would have been negligent had it quoted connection rates that would in all likelihood not be in effect when Blue Heron would be in a position to interconnect and that would not have applied at the date of interconnection. To the extent ONS had quoted the Sub 9 connection fee rates, leading Blue Heron to assert, as it does without such representation, that Blue Heron would be entitled to the outdated and nonremunerative rate, and were Blue Heron to be successful in that assertion, ONS's end use customers would have been injured because it would then become necessary to increase end use usage rates to offset the unjustified shortfall. Responding further, the short delay in quoting the anticipated and approved Sub 71 rate has resulted in no injury to Blue Heron. Irrespective of any quote at the exact time ONS accepted the application to assist Blue Heron in proceeding with its project, the Commission shortly thereafter approved new rates. A rate quoted by a utility is always subject to change through Commission order. This is not a situation where had Blue Heron known that the connection fees were to increase it could have gone elsewhere and obtained its sewer services from another supplier. Concepts such as unfair trade practices and bait and switch are concepts that apply in competitive market contexts and are not applicable in this regulated utility setting and are not practices with which this Commission has jurisdiction to provide redress. Any remedy for a failure to comply with this Commission rule would not include providing an applicant with the ability to interconnect at a rate different from that approved by the Commission at the time interconnection took place.

71. In response to allegations set forth in paragraph 71 of the complaint, Respondent answers that it accepted Blue Heron's application to provide sewer service on March 23, 2021 but denies that it did so by committing to Complainant that the rate per

connection would be a rate other than that approved by the Commission in Docket No. W-1300, Sub 71.

72. In response to allegations set forth in paragraph 72 of the complaint, Respondent denies the allegations set forth therein.
73. In response to allegations set forth in paragraph 73 of the complaint, Respondent denies the allegations set forth therein.
74. In response to allegations set forth in paragraph 74 of the complaint, Respondent realleges and incorporates herein the preceding responses to paragraphs 1 through 73.
75. In response to allegations set forth in paragraph 75 of the complaint, Respondent denies the allegations set forth therein.
76. In response to allegations set forth in paragraph 76 of the complaint, Respondent admits that it charged Liberty Senior \$4,000 per REU and that on April 5, 2021 Liberty Senior solicited a commitment to provide sewer connection services from ONS. Responding to the remaining allegations set forth in paragraph 76 of the complaint, a solicitation of sewer connection services from ONS is a solicitation, no more no less. With respect to the allegations addressing the Sub 9 order, the order speaks for itself and requires no further response. The Sub 9 order has nothing to do with the rates Liberty Senior is required to pay for interconnection.
77. In response to allegations set forth in paragraph 77 of the complaint, Respondent admits that on April 21, 2021 Respondent issued Liberty Senior an invoice for connection fees of \$4,000 per REU. Responding to the remaining allegations set forth in paragraph 77, Respondent denies same.
78. In response to allegations set forth in paragraph 78 of the complaint, Respondent answers that it calculated REUs in accordance with the Commission's order in Sub 71 and denies that it bore any responsibility to Liberty Senior under the Commission's order in Sub 9 or any provision of the APA addressed in that order.
79. In response to allegations set forth in paragraph 79 of the complaint, Respondent is without sufficient information to form a belief as to any meter with respect to the Liberty Senior project and therefor denies same. Further responding to the remaining

allegations set forth in paragraph 79, Respondent answers that the APA addressed in Sub 9 is not an instrument upon which Liberty Senior can rely in demanding services from Respondent.

80. In response to allegations set forth in paragraph 80 other complaint, Respondent denies the allegations set forth therein.
81. In response to allegations set forth in paragraph 81 of the complaint, the allegation addresses the Commission rule. The terms of the rule speak for themselves and require no further response. The allegation contains no factual allegations and no further response is required. Responding further, Respondent denies that it violated the terms of the rule.
82. In response to allegations set forth in paragraph 82 of the complaint, Respondent admits that Liberty Senior solicited sewer connection services from ONSWC on April 5, 2021 , expressly asking, "What do we need to do to pay the \$1,500 unit connection fee?" Further responding to allegations set forth in paragraph 82, Respondent denies those allegations.
83. In response to allegations set forth in paragraph 83 of the complaint, this is not an allegation but a request for relief and requires no response.
84. In response to allegations set forth in paragraph 84 of the complaint, Respondent realleges and incorporates herein its responses to proceeding paragraphs 1 through 83.
85. In response to paragraph 85 of the complaint, Respondent admits the allegations set forth therein.
86. In response to allegations set forth in paragraph 86 of the complaint, Respondent answers that the terms of the Commission's Sub 71 order speak for themselves and require no response.
87. In response to allegations set forth in paragraph 87 of the complaint, Respondent admits that ONS's monthly charges of \$11,445.53 are based on 270.58 REU, consistent with the number of REU cited in ONS's connection invoice to Blue Heron.
88. In response to allegations set forth in paragraph 88 of the complaint, Respondent answers that the terms of the Commission's order in Sub 9 and the APA addressed

therein speak for themselves and require no response. Responding further, such order and APA provide no basis for determining connection fees or REUs that Complainants must pay to receive interconnection.

89. In response to allegations set forth in paragraph 89 of the complaint, Respondent answers that the Commission's order in Sub 9 and the APA addressed therein provide no basis for determining connection fees or REUs that Complainants must pay.
90. In response to allegations set forth in paragraph 90 of the complaint, Respondent denies the allegations therein.
91. In response to allegations set forth in paragraph 91 of the complaint, Respondent admits that it has denied Blue Heron's request for any refund. The remaining allegations are denied.

WHEREFORE, Respondent respectfully requests that the Commission granted the following relief:

1. Enter an order dismissing the Complaint on the grounds that Complainants have failed to state a claim for relief upon which relief can be granted pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure.
2. Enter an order dismissing the Complaint of Blue Heron on the grounds that Complainant has waived its rights to the relief requested because Blue Heron has paid connection fees and usage fees properly assessed against it without making such payments under protest.
3. Enter an order dismissing the complaint of Liberty Senior because no existing case and controversy has been alleged in the complaint as to Liberty Senior and its allegations are premature and are not ripe for consideration.
4. Enter an order dismissing the Complaint on the grounds that Complainants have failed to comply with the Commission's requirements under NCUC Rules R1-5 and R1-9, which require complaints to be verified.
5. Enter an order dismissing the Complaint on the grounds that Respondent has appropriately charged Complainants under the appropriate Commission orders in effect at the time any services were provided to Complainants.

6. Enter an order ruling that connection fees and commodity fees charged Complainants have been calculated with the appropriate connection fees and billing determinants so as to minimize usage rates to end users in the Briar Chapel service area.
7. Grant such other and further relief as the Commission may find just and reasonable.

Respectfully submitted, this 12th day of June , 2023

Edward S. Finley, Jr., PLLC
/s/Edward S. Finley, Jr.
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STATE OF ALABAMA

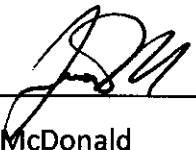
VERIFICATION

JEFFERSON COUNTY

John McDonald, being first duly sworn, deposes and says that he is President of Old North State Water Company, Inc, that he has read the foregoing Response, Answer and Motion to Dismiss and that the same is true of his own knowledge, except as to those matters and things therein alleged upon information and belief, which he believes to be true.

This the 12th day of June, 2023.

Old North State Water Company, Inc.

By: 

John McDonald
President

Sworn to and subscribed before me,

This the 12 day of June, 2023



Notary Public



CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing RESPONSE, MOTION TO DISMISS, AND ANSWER was duly served upon parties of record either by depositing same in a depository of the United States Postal Service, first class postage prepaid, or by electronic delivery.

This the 12th day of June 2023

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Christopher B. Dodd
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COUNSEL FOR RESPONDENT

DOCKET NO. W-1300, Sub 92

Blue Heron Asset Management, LLC, and
Liberty Senior Living, LLC

v.

Old North State Water Company, Inc.

- () The relief offered in the Answer filed by the Defendant is acceptable to us as Complainants, and we do not desire a public hearing in this proceeding.
- () The Answer filed by the Defendant is not satisfactory to us as Complainants, and we hereby request a public hearing at which time we will present evidence in support of the complaint.
- () Although the Answer filed by the Defendant is not completely satisfactory to us as Complainants, we do not request a hearing at this time. We do request that the Commission keep this docket open for at least six months so that the matters complained of can be monitored by the Complainants, the Commission, and the Public Staff.
- () The Answer filed by the Defendant is not satisfactory to us as Complainants and we request the following additional information subject to Commission review as to the reasonableness of our request. (Detail)

Signature of Complainants

Signature of Complainants

THIS REPLY SHOULD BE RETURNED TO:

Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4325