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March 13, 2008

**VIA HAND-DELIVERY AND E-MAIL**

Blessing Chukwu  
Utilities Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Keith Layton, Staff Attorney  
Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

**Re: Perkins Mountain Water Company and Perkins Mountain Utility Company  
Docket Nos. W-20380A-05-0490 and SW-20379A-05-0489  
Fifth Supplemental Response to Staff's Second Set of Data Requests Dated  
February 8, 2008**

Dear Ms. Chukwu and Mr. Layton:

Perkins Mountain Water Company and Perkins Mountain Utility Company ("Applicants") hereby submit the attached Supplemental Response to BNC 2.12 of Staff's Second Set of Data Requests dated February 8, 2008. An electronic version of this response is also being sent to you via e-mail. This supplement to the response provides information regarding the states of North Carolina and South Carolina. Please note that the documents attached to this Supplemental Response relate only to the supplemental information provided herein.

Arizona Corporation Commission  
**DOCKETED**  
MAR 13 2008

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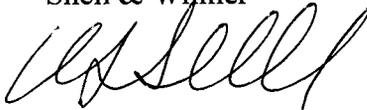
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Blessing Chukwu  
Keith Layton  
March 13, 2008  
Page 2

Please do not hesitate to contact me if you have any questions.

Sincerely,

Snell & Wilmer



Bradley S. Carroll

BSC/jyb

Enclosure

cc: Docket Control (Original plus 15 copies)  
Robin Mitchell, Esq. (Via e-mail only)  
Michele Finical (Via e-mail only)

**RESPONSE OF PERKINS MOUNTAIN WATER COMPANY  
AND PERKINS MOUNTAIN UTILITY COMPANY  
TO ARIZONA CORPORATION COMMISSION  
STAFF'S SECOND SET OF DATA REQUESTS  
DOCKET NOs. W-20380A-05-0490, SW-20379A-05-0489  
February 8, 2008 (Response Supplemented March 13, 2008)**

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**BNC 2.12** In March 2007, the Illinois Commerce Commission in Docket No. 06-0360, cited five (5) affiliates of Utilities, Inc., for failure to comply with Commission Orders and with Commission Rules. Please provide a history of Citations issued by regulatory agencies in other jurisdictions against Utilities, Inc. and/or any of its respective affiliates since the year 2000.

Response: Utilities, Inc. is a holding company that owns the stock of approximately 90 operating utilities in 17 states. As such, to the best of my knowledge and belief, there have been no citations that have been issued by regulatory agencies against Utilities, Inc. in connection with utility compliance obligations. With respect to its utility operating company affiliates, the requested information is set forth below for each of the applicable states:

Arizona None

Georgia None

Kentucky None

Louisiana On August 11, 2004, the Louisiana Department of Environmental Quality issued a Compliance Order to *Louisiana Water Service, Inc.* following an inspection by the Department. A copy of the Compliance Order is attached.

On May 21, 2002, the Louisiana Department of Environmental Quality issued a Compliance Order to *Utilities, Inc. of Louisiana* following an inspection by the Department. A copy of the Compliance Order is attached.

Mississippi None

New Jersey None

Ohio None

Tennessee None

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Nevada – On October 25, 2000, the Public Utilities Commission of Nevada (“Commission”) issued an order in Docket No. 98-0-5008 relating to an application by *Spring Creek Utilities Company* to withdraw from its Capital Projects and Hydrant Fund. During the review of this application, the Commission’s Regulatory operations Staff identified three compliance issues including a failure to obtain a permit to construct pursuant to the Nevada Utility Environmental Protection Act (“UEPA”) for construction of a 500,000 gallon storage tank. *Spring Creek Utilities Company* entered into a Stipulation wherein it agreed to pay a \$5,000 fine that would be suspended for three years and expunged if the utility obtained all necessary construction permits and there were no further violations of the UEPA. A copy of the order is attached.

On October 17, 2006, the Commission issued an order approving a Settlement Agreement and Stipulation Agreement between the Commission Staff and *Spring Creek Utilities Company* relating to a Petition for an Order to Show Cause that alleged that *Spring Creek Utilities Company* failed to provide reasonably continuous and adequate service to its customers. A copy of the order is attached.

Maryland None

Pennsylvania None

Indiana - On August 24, 2004, as part of an order involving the sale of assets and approval of an acquisition adjustment, the Indiana Utility Regulatory Commission (“Commission”) found in Cause No. 41873 that certain records of *Indiana Water Services, Inc. (“IWSI”)* were being kept out of state (in Northbrook, Illinois) contrary to the requirement that a utility's books be kept in the state and not be removed except upon conditions prescribed by the Commission. *IWSI* did this because one of its Indiana affiliates, Twin Lakes Utilities, had already been given permission by the Commission to keep its books in Illinois. The Commission found that notwithstanding its authorization for the affiliate to keep its books and records out of state, *IWSI* should have asked for permission. The Commission did not require *IWSI* to transfer the books and records back to Indiana, but merely ordered that *IWSI* would have to pay the costs of the Commission and the Office of Utility Consumer Counselor related to any necessary visits to Northbrook.

**RESPONSE OF PERKINS MOUNTAIN WATER COMPANY  
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Virginia - On January 21, 2005 *Massanutten Public Service Corporation* ("MPSC") filed an application with the Virginia State Corporation Commission ("Commission") under the state's Affiliates Act requesting approval of a water services agreement with Water Service Corporation ("WSC") (an affiliate of MPSC) under which MPSC and WSC had already been operating. At the time MPSC and WSC had entered into the agreement, MPSC was exempt from the Affiliates Act because it did not meet the financial threshold that would have required approval of the agreement. On April 20, 2005, MPSC filed a request to withdraw its application because certain provisions of the agreement needed to be revised. On April 21, 2005, the Commission granted the application and dismissed the case without prejudice. By order dated June 7, 2005, MPSC was directed to file a new application with a Revised Agreement. MPSC filed a new application for approval of the Revised Agreement in Case No. PUE-2005-0063. On October 19, 2005, the Commission issued an order granting approval of the Revised Application. In its order approving the Revised Agreement, the Commission found that MPSC and WSC had been operating under the prior agreement which had not been approved by the Commission and ordered that MPSC "take the necessary steps to ensure that prior approval is obtained by the Commission under the Affiliates Act for any future affiliate transactions." A copy of the order is attached for your convenience.

On March 15, 2006, MPSC, entered into a Consent and Special Order ("Consent Order") with the Virginia Department of Environmental Quality to resolve alleged violations of environmental laws and regulations. MPSC without admitting or denying the factual findings or conclusions of law contained in the Consent Order, agreed to perform the actions described in Appendix A to the Consent Order and to pay a civil charge of \$19,700. A copy of the Consent Order is attached.

Illinois - On January 3, 2007, the Illinois Environmental Protection Agency ("EPA") accepted a Compliance Commitment Agreement proposed by *Galena Territory Utilities, Inc.* ("Galena") to resolve a notice of alleged violations under the Illinois Environmental Protection Act. A copy of the EPA's acceptance letter is attached as BNC 2.12 IL-A.

On March 21, 2007, the Illinois Commerce Commission ("Commission") issued an order in Docket No. 06-0360 relating to *Apple Canyon Utility Company, Cedar Bluff Utilities, Inc., Charmar Water Company, Cherry Hill Water Company* and *Northern Hills Water Company* ("collectively

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“Companies”). The Commission found, in part, that the *Companies* failed to maintain and file on April 7, 2005, continuing property reports (“CPRs”) as was required by the Commission. The *Companies* had testified that the in-house data base system that was designed to track the CPRs did not interface properly with other older systems and there was a delay in getting the data entry work completed in time for the April 7, 2005 deadline. Notwithstanding, the Commission issued an order that required that future rate base additions for the *Companies* must be supported by CPRs and assessed a civil penalty totaling \$5,000. A copy of the order is attached as BNC 2.12 IL-B.

On May 18, 2007, Circuit Court for the 15th Judicial Circuit of Stephenson County, Illinois, entered an order (No. 0CH96) approving a Consent Order between the Illinois Environmental Protection Agency and *Northern Hills Water and Sewer Company* (“*Northern Hills*”) wherein *Northern Hills*, without admitting the allegations of violations contained in the complaint, agreed to comply with the conditions of the Consent Order and pay a civil penalty of \$9,750. The allegations of the complaint were that *Northern Hills* had violated various provisions of the Illinois Environmental Protection Act relating to its waste water treatment plant in Freeport, Illinois. A copy of the Consent Order is attached as BNC 2.12 IL-C.

On August 30, 2006, the Commission issued an order in Docket No. 05-0452 relating to an application for a 2.95 acre extension of the CC&N for *Galena Territory Utilities, Inc.* (“*Galena*”) to provide sanitary sewer service to an existing 71-unit condominium development contiguous to its existing service territory. In approving the application, the Commission found, in part, that *Galena* had provided service prior to the issuance of the CC&N and ordered *Galena* to pay a \$1,000 fine. A copy of the order is attached as BNC 2.12 IL-D.

On July 12, 2005, Circuit Court for the Nineteenth Judicial District of Lake County, Illinois, entered an order (No. 05CH1009) approving a Consent Order between the Illinois Environmental Protection Agency and *Charmar Water Company* (“*Charmar*”) wherein *Charmar*, without admitting the allegations of violations contained in the complaint, agreed to comply with the conditions of the Consent Order and pay a civil penalty of \$5,000. The allegations of the complaint were that *Charmar* had failed to obtain a construction permit for a hydropneumatic storage tank and

**RESPONSE OF PERKINS MOUNTAIN WATER COMPANY  
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February 8, 2008 (Response Supplemented March 13, 2008)**

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operate such tank without a permit. A copy of the Consent Order is attached as BNC 2.12 IL-E.

On or about November 6, 2003, the United States Environmental Protection Agency and *Northern Hills Water and Sewer Company* ("*Northern Hills*") entered into a Consent Agreement and Final Order ("*Consent Agreement*") in Docket No. CERCLA-05-2004 wherein *Northern Hills*, without admitting or denying the factual allegations of the complaint, agreed to pay a civil penalty of \$1,000 for failing to timely report release of chlorine from its Freeport facility. A copy of the Consent Agreement is attached as BNC 2.12 IL-F.

*North Carolina* – Although not a citation *per se*, on April 15, 2005, the North Carolina Utilities Commission ("*Commission*") issued an order granting a partial rate increase in connection with an application by *Carolina Water Service, Inc. of North Carolina* ("*CWS*") for a water and sewer rate increase in Docket No. W-354, Sub 266. As part of this rate case review, the Commission found that *CWS* had not complied with several requirements. Although the Commission specifically ruled in its order it was not appropriate to impose any penalties, it did take some of these items into consideration in setting rates and further ordered *CWS* to comply with the requirements in the future. A copy of this rate case order is attached as BNC 2.12 NC

*South Carolina* – Attached (as identified) are copies of Consent Orders entered into between the South Carolina Department of Health and Environmental Control and the Utilities, Inc. affiliates listed below.

- *Utilities Services of South Carolina, Inc. (Charleswood Subdivision)* – No. 06-098 DW, June 15, 2006. No civil penalty was required if the utility complied with the Consent Order. BNC 2.12 SC-A
- *Utilities Services of South Carolina, Inc. (Purdy Shores)* – No. 06-225 DW, December 4, 2006. No civil penalty was required if the utility complied with the Consent Order. BNC 2.12 SC-B
- *Utilities Services of South Carolina, Inc. (Barney Rhett Subdivision)* – No. 05-149 DW, October 18, 2005. No civil penalty was required if the utility complied with the Consent Order. BNC 2.12 SC-C

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- *Utilities Services of South Carolina, Inc. (Foxwood Subdivision)* – No. 05-099-W, July 21, 2005. An \$8,400 civil penalty was agreed to. BNC 2.12 SC-D
- *Carolina Water Service, Inc. (Glenn Village II Subdivision)* – No. 05-094-DW, July 19, 2005. No civil penalty was required if the utility complied with the Consent Order. BNC 2.12 SC-E
- *United Utility Company, Inc. (Briarcreek Subdivision I WWTF)* – No. 04-180-W, October 6, 2004. A \$3,000 civil penalty was agreed to. BNC 2.12 SC-F
- *Carolina Water Service, Inc. (River Hills Subdivision)* – No. 04-140-W, July 30, 2004. A \$9,600 civil penalty was agreed to. BNC 2.12 SC-G
- *Utilities Services of South Carolina, Inc. (Farrowood Estates)* – No. 04-073 DW, April 6, 2004. No civil penalty was required if the utility complied with the Consent Order. BNC 2.12 SC-H
- *Utilities Services of South Carolina, Inc. (Washington Heights)* – No. 04-072 DW, April 6, 2004. No civil penalty was required if the utility complied with the Consent Order. BNC 2.12 SC-I

Prepared by: Michael T. Dryjanski  
Manager, Regulatory Accounting  
Utilities, Inc.  
2335 Sanders Road  
Northbrook, IL 60062

# **BNC 2.12 SC-A**

**THE STATE OF SOUTH CAROLINA BEFORE THE DEPARTMENT  
OF HEALTH AND ENVIRONMENTAL CONTROL**

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**IN RE: UTILITIES SERVICES OF SOUTH CAROLINA, INC.  
CHARLESWOOD SUBDIVISION  
SYSTEM NUMBER 4050008  
RICHLAND COUNTY**

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**CONSENT ORDER  
06-098-DW**

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Utilities Services of South Carolina, Inc. (Respondent) owns and is responsible for the proper operation and maintenance of the public water system (PWS) that supplies water to the residents of the Charleswood Subdivision, located in Richland County, South Carolina.

South Carolina Department of Health and Environmental Control (Department) records reveal that the combined Radium 226/228 sample results for the Respondent's PWS produced running annual averages (RAA) that exceeded the maximum contaminant level (MCL) for combined Radium 226/228 during the compliance periods of April 2004 – March 2005, July 2004 – June 2005 and October 2004 – September 2005.

**IN THE INTEREST OF RESOLVING THIS MATTER** without delay and expense of litigation, the Respondent agrees to the entry of this Consent Order, but neither agrees nor disagrees with the Findings of Fact and Conclusions of Law; and therefore, agrees that this Order shall be deemed an admission of fact and law only as necessary for enforcement of this Order by the Department or subsequent actions relating to the Respondent by the Department.

**FINDINGS OF FACT**

1. Utilities Services of South Carolina, Inc. (Respondent) owns and is responsible for the proper operation and maintenance of the public water system (PWS) that supplies water

to the residents of the Charleswood Subdivision, located in Richland County, South Carolina.

2. The Respondent's PWS consist of seven (7) wells, storage facilities, and a water distribution system that serves one hundred ninety nine (199) service connections.
3. The Respondent's PWS is required to be monitored on a quarterly basis for combined Radium 226/228. The MCL for combined Radium 226/228 is five (5) picocuries/Liter (pCi/L). Compliance for the MCL for combined Radium 226/ 228 is based upon the RAA result for four (4) consecutive monitoring periods. The referenced PWS experienced violations when the RAA results for combined Radium 226/228 for Well G40719 exceeded the MCL for the compliance periods of April 2004 – March 2005, July 2004 – June 2005, and October 2004 – September 2005 as indicated below:

<u>Monitoring Period</u>	<u>Results</u>	<u>RAA</u>
April – June 2004	7.0 pCi/L	–
July – September 2004	6.2 pCi/L	–
October – December 2004	6.9 pCi/L	–
January – March 2005	6.9 pCi/L	7 pCi/L
April – June 2005	2.4 pCi/L	6 pCi/L
July – September 2005	8.9 pCi/L	6 pCi/L

4. On March 21, 2005, the Department issued a Notice of Violation (NOV) to the Respondent for the PWS exceeding the MCL RAA for combined Radium 226/228 during the April 2004 – March 2005 compliance period indicated above. The NOV informed the Respondent that it must issue public notice to its residents as a result of the violations and submit a copy of the public notice issued to the Department.
5. On April 22, 2005, the Department received a copy of the public notice for the April 2004 – March 2005 MCL exceedance.

6. On January 9, 2006, the Department issued NOV's to the Respondent for the PWS exceeding the MCL RAA for combined Radium 226/228 during the July 2004 – June 2005 and October 2004 – September 2005 compliance periods indicated above. The NOV's informed the Respondent that it must issue public notice to its residents as a result of the violations and submit a copy of the public notice issued to the Department.
7. On February 10, 2006, the Department received a copy of the public notices for the July 2004 – June 2005 and October 2004 – September 2005 MCL exceedances.
8. On March 14, 2006, Department staff held an enforcement conference with the Respondent. The possibility of a Consent Order was discussed.

#### **CONCLUSIONS OF LAW**

Based upon the above Findings of Fact, the Department, pursuant to the State Safe Drinking Water Act, S.C. Code Ann. §§ 44-55-10 to 44-55-120 (Rev. 2002), reaches the following Conclusions of Law:

1. The Respondent violated the State Primary Drinking Water Regulations, 24A S.C. Code Ann. Regs. 61-58.5(H)(2) (Supp. 2005), in that the referenced PWS exceeded the MCL for combined Radium 226/228.
2. The State Safe Drinking Water Act, S.C. Code Ann. § 44-55-90(B) (Rev. 2002), provides for a civil penalty not to exceed five thousand dollars (\$5,000.00) a day per violation for any person violating the Act.

**NOW, THEREFORE, IT IS ORDERED, CONSENTED TO AND AGREED**, pursuant to the State Safe Drinking Water Act, S.C. Code Ann. §§ 44-55-10 to 44-55-120 (Rev. 2002), that the Respondent shall:

1. Henceforth, operate and maintain the Charleswood Subdivision PWS in accordance with applicable State and Federal laws and regulations.
2. Within thirty (30) days of the execution date of this Order, submit to the Department for review and approval a proposed schedule for the installation of the Radium 226/228 removal treatment system. The schedule, upon Department approval, shall be incorporated into and become an enforceable part of this Order. In accordance with the approved schedule, the submittal package for the installation of the proposed Radium 226/228 removal treatment system for the Charleswood Subdivision PWS shall include in detail, the plans, basis for design (including calculations) and specifications per the State Primary Drinking Water Regulations, 24A S.C. Code Ann. Regs. 61-58.1 (Supp. 2005). The submittal package shall also include a completed application for a permit to construct.
3. Within fifteen (15) days of completion of the installation of the Radium 226/228 removal treatment system for the Charleswood Subdivision PWS, schedule an inspection with the Department's Region 3 Columbia Environmental Quality Control office at (803) 896-0620 to obtain final approval to operate from the Department.

**THE PARTIES FURTHER STIPULATE** that the Respondent shall pay a civil penalty of two thousand eight hundred dollars (\$2,800.00) should it fail to comply with any requirement pursuant to this Consent Order, including any implementation schedule approved by the Department. Such penalties shall be due and payable upon written notice to the Respondent. The Department's determination that a requirement has been missed shall be final. All penalties due under this paragraph shall be made payable to the South Carolina Department of Health and Environmental Control within thirty (30) days of notification by the Department. The stipulated

penalties set forth above shall be in addition to any other remedies or sanctions which may be available to the Department by reason of the Respondent's failure to comply with the requirements of this Order. The Department's determination that the requirements have not been met shall be final.

**PURSUANT TO THIS ORDER**, communications regarding this Order and its requirements are to include the Order number and shall be addressed as follows:

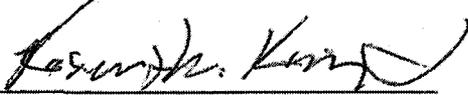
Tyra Cunningham  
Bureau of Water-Enforcement Division  
S.C. Department of Health and Environmental Control  
2600 Bull Street  
Columbia, S.C. 29201

**IT IS FURTHER ORDERED AND AGREED** that this Consent Order governs only Utilities Services of South Carolina, Inc.'s liability to the Department for civil sanctions arising from matters set forth herein and constitutes the entire agreement between the Department and Utilities Services of South Carolina, Inc. with respect to the resolution and settlement of the matters set forth herein. The parties are not relying upon any representations, promises, understandings, or agreements except as expressly set forth within this Order.

**IT IS FURTHER ORDERED AND AGREED** that failure to comply with any provisions of this Order shall be grounds for further enforcement action pursuant to the State Safe Drinking Water Act, S.C. Code Ann. § 44-55-80(A) (Rev. 2002), to include the assessment of additional civil penalties.

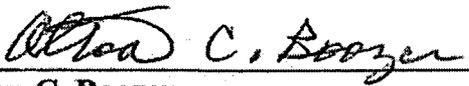
[Signature Page Follows]

FOR THE SOUTH CAROLINA DEPARTMENT  
OF HEALTH AND ENVIRONMENTAL CONTROL



Robert W. King, Jr., P.E.  
Deputy Commissioner  
Environmental Quality Control

Date: 6/15/06



Alton C. Boozer  
Chief, Bureau of Water

Date: 06/12/06



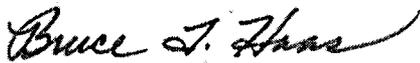
Douglas B. Kinard, P.E., Director  
Water Enforcement Division  
Bureau of Water

Date: 6-09-06

  
BHEC Legal Counsel

Date: June 13, 2006

I CONSENT:



Bruce Haas, Regional Director  
Utilities Services of South Carolina, Inc.

Date: 6/8/06

# **BNC 2.12 SC-B**

**THE STATE OF SOUTH CAROLINA BEFORE THE DEPARTMENT  
OF HEALTH AND ENVIRONMENTAL CONTROL**

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**IN RE: UTILITIES SERVICES OF SOUTH CAROLINA, INC.  
PURDY SHORES  
SYSTEM NUMBER 0150014  
ABBEVILLE COUNTY**

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**CONSENT ORDER  
06-225-DW**

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Utilities Services of South Carolina, Inc. (Respondent) owns and is responsible for the proper operation and maintenance of public water system (PWS) No. 0150014 that supplies water to the customers of Purdy Shores located in Abbeville County, South Carolina.

South Carolina Department of Health and Environmental Control (Department) records reveal that the Respondent's PWS No. 0150014 sample results produced running annual averages (RAA) that exceeded the maximum contaminant level (MCL) for combined Radium 226/228 and Gross Alpha particle activity during the compliance periods of July 2004 – June 2005, October 2004 – September 2005 and January 2005 – December 2005.

**IN THE INTEREST OF RESOLVING THIS MATTER** without delay and expense of litigation, the Respondent agrees to the entry of this Consent Order, but neither agrees nor disagrees with the Findings of Fact and Conclusions of Law; and therefore, agrees that this Order shall be deemed an admission of fact and law only as necessary for enforcement of this Order by the Department or subsequent actions relating to the Respondent by the Department.

**FINDINGS OF FACT**

1. Utilities Services of South Carolina, Inc. (Respondent) owns and is responsible for the proper operation and maintenance of public water system (PWS) No. 0150014 that

supplies water to the customers of Purdy Shores located in Abbeville County, South Carolina.

2. The Respondent's PWS is required to be monitored on a quarterly basis for combined Radium 226/228. The MCL for combined Radium 226/228 is five (5) picocuries/Liter (pCi/L). Compliance for the combined Radium 226/ 228 MCL is based upon the RAA result for four (4) consecutive quarterly samples. The referenced PWS experienced violations when the RAA results for combined Radium 226/228 for Well Two (2) (G01117) and Well Three (3) (G01118) exceeded the MCL for the compliance periods of July 2004 – June 2005, October 2004 – September 2005, and January 2005 – December 2005 as indicated below:

<u>Monitoring Period (G01117)</u>	<u>Results</u>	<u>RAA</u>
July – September 2004	–	–
October – December 2004	–	–
January – March 2005	16.4 pCi/L	–
April – June 2005	15.2 pCi/L	16 pCi/L
July – September 2005	18.3 pCi/L	17 pCi/L
October – December 2005	21.3 pCi/L	18 pCi/L

<u>Monitoring Period (G01118)</u>	<u>Results</u>	<u>RAA</u>
July – September 2004	–	–
October – December 2004	–	–
January – March 2005	8.7 pCi/L	–
April – June 2005	7.5 pCi/L	8 pCi/L
July – September 2005	11.7 pCi/L	9 pCi/L
October – December 2005	8.1 pCi/L	9 pCi/L

3. The Respondent's PWS is required to be monitored on a quarterly basis for Gross Alpha particle activity. The MCL for Gross Alpha particle activity is fifteen (15) pCi/L. Compliance for Gross Alpha particle activity is based upon the RAA result for four (4) consecutive quarterly samples. The referenced PWS experienced violations when the RAA results for Gross Alpha particle activity for Well Two (2) (G01117) and Well Three

(3) (G0118) exceeded the MCL for the compliance periods of July 2004 – June 2005, October 2004 – September 2005, and January 2005 – December 2005 as indicated below:

<u>Monitoring Period (G01117)</u>	<u>Results</u>	<u>RAA</u>
July – September 2004	–	–
October – December 2004	–	–
January – March 2005	21.9 pCi/L	–
April – June 2005	19.5 pCi/L	21 pCi/L
July – September 2005	39.9 pCi/L	27 pCi/L
October – December 2005	23.8 pCi/L	26 pCi/L

<u>Monitoring Period (G01118)</u>	<u>Results</u>	<u>RAA</u>
July – September 2004	–	–
October – December 2004	–	–
January – March 2005	13.3 pCi/L	–
April – June 2005	30.2 pCi/L	22 pCi/L
July – September 2005	13.6 pCi/L	19 pCi/L
October – December 2005	13.2 pCi/L	18 pCi/L

4. On April 6, 2006, the Department issued Notices of Violation (NOV) to the Respondent for PWS No. 0150014 for exceedances of the MCL for combined Radium 226/228 and Gross Alpha particle activity during the July 2004 – June 2005, and October 2004 – September 2005 compliance periods indicated above. The NOV informed the Respondent that it must issue public notice to its customers as a result of the violations and submit a copy of the public notice to the Department.
5. On May 9, 2006, the Respondent submitted a copy of the public notice to the Department for the July 2004 – June 2005, and October 2004 – September 2005 MCL exceedances for combined Radium 226/228 and Gross Alpha particle activity.
6. On May 22, 2006, the Department issued an NOV to the Respondent for PWS No. 0150014 for exceedances of the MCL for combined Radium 226/228 and Gross Alpha particle activity during the January 2005 – December 2005 compliance period indicated above. The NOV informed the Respondent that it must issue public notice to its

customers as a result of the violations and submit a copy of the public notice issued to the Department.

7. On June 16, 2006, the Respondent submitted to the Department a copy of the public notice for the January 2005 – December 2005 MCL exceedances for combined Radium 226/228 and Gross Alpha particle activity.
8. On August 1, 2006, Department staff held an enforcement conference with the Respondent. The possibility of a Consent Order was discussed.

#### **CONCLUSIONS OF LAW**

Based upon the above Findings of Fact, the Department, pursuant to the State Safe Drinking Water Act, S.C. Code Ann. §§ 44-55-10 to 44-55-120 (2002), reaches the following Conclusions of Law:

1. The Respondent violated the State Primary Drinking Water Regulations, 24A S.C. Code Ann. Regs. 61-58.5(H)(2) (Supp. 2005), in that PWS No. 0150014 exceeded the MCL for combined Radium 226/228 during the July 2004 – June 2005, October 2004 – September 2005, and January 2005 – December 2005 compliance periods.
2. The Respondent violated the State Primary Drinking Water Regulations, 24A S.C. Code Ann. Regs. 61-58.5(H)(3) (Supp. 2005), in that PWS No. 0150014 exceeded the MCL for Gross Alpha particle activity during the July 2004 – June 2005, October 2004 – September 2005, and January 2005 – December 2005 compliance periods.
3. The State Safe Drinking Water Act, S.C. Code Ann. § 44-55-90(B) (2002), provides for a civil penalty not to exceed five thousand dollars (\$5,000.00) a day per violation for any person violating the Act.

**NOW, THEREFORE, IT IS ORDERED, CONSENTED TO AND AGREED**, pursuant to the State Safe Drinking Water Act, S.C. Code Ann. §§ 44-55-10 to 44-55-120 (2002), that the Respondent shall:

1. Henceforth, operate and maintain the Purdy Shores PWS No. 0150014 in accordance with applicable State and Federal laws and regulations.
2. Within thirty (30) days of the execution date of this Order, submit to the Department in writing which option listed below the Respondent has selected to implement:

Option A

- A. Within thirty (30) days of the execution date of this Order, submit to the Department for review and approval a proposed schedule for the installation of the Radium 226/228 and Gross Alpha particle removal treatment system. The schedule, upon Department approval, shall be incorporated into and become an enforceable part of this Order. In accordance with the approved schedule, the submittal package for the installation of the proposed Radium 226/228 and Gross Alpha particle removal treatment system for the Purdy Shores PWS No. 0150014 shall include in detail, the plans, basis for design (including calculations) and specifications per the State Primary Drinking Water Regulations, 24A S.C. Code Ann. Regs. 61-58.1 (Supp. 2005). The submittal package shall also include a completed application for a permit to construct.

Option B

- B. Within thirty (30) days of the execution date of this Order, submit to the Department for review and approval a submittal package for the installation of a new public supply well for the connection to Purdy Shores PWS No. 0150014

existing distribution system. The submittal package shall include in detail the plans, basis for design (including calculations), and specifications per State Primary Drinking Water Regulations, 24A S.C. Code Ann. Regs. 61-58.1 (Supp. 2005). The submittal package shall also include a complete application for a permit to construct. Within thirty (30) days of the issuance of the permit to construct a test well, complete well construction. Within forty-five (45) days of receiving water quality test from the test well, apply for a permit to construct a follow-up well. Within (30) days of the issuance of the permit to construct the follow-up well, complete construction.

3. Within fifteen (15) days of completion of implementing item A or B for the Purdy Shores PWS No. 0150014, schedule an inspection with the Department's Region 1 Greenwood Environmental Quality Control office at (864) 223-0333 to obtain final approval to operate from the Department.

**THE PARTIES FURTHER STIPULATE** that the Respondent shall pay a civil penalty of six thousand eight hundred dollars (\$6,800.00) should it fail to comply with any requirement pursuant to this Consent Order, including any implementation schedule approved by the Department. Such penalties shall be due and payable upon written notice to the Respondent. The Department's determination that a requirement has not been met shall be final. All penalties due under this paragraph shall be made payable to the South Carolina Department of Health and Environmental Control within thirty (30) days of notification by the Department. The stipulated penalties set forth above shall be in addition to any other remedies or sanctions which may be available to the Department by reason of the Respondent's failure to comply with the

requirements of this Order. The Department's determination that the requirements have not been met shall be final.

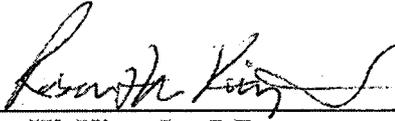
**PURSUANT TO THIS ORDER**, communications regarding this Order and its requirements are to include the Order number and shall be addressed as follows:

Tyra Cunningham  
Bureau of Water-Enforcement Division  
S.C. Department of Health and Environmental Control  
2600 Bull Street  
Columbia, S.C. 29201

**IT IS FURTHER ORDERED AND AGREED** that this Consent Order governs only Utilities Services of South Carolina, Inc.'s liability to the Department for civil sanctions arising from matters set forth herein and constitutes the entire agreement between the Department and Utilities Services of South Carolina, Inc. with respect to the resolution and settlement of the matters set forth herein. The parties are not relying upon any representations, promises, understandings, or agreements except as expressly set forth within this Order.

**IT IS FURTHER ORDERED AND AGREED** that failure to comply with any provisions of this Order shall be grounds for further enforcement action pursuant to the State Safe Drinking Water Act, S.C. Code Ann. § 44-55-80(A) (2002), to include the assessment of additional civil penalties.

FOR THE SOUTH CAROLINA DEPARTMENT  
OF HEALTH AND ENVIRONMENTAL CONTROL

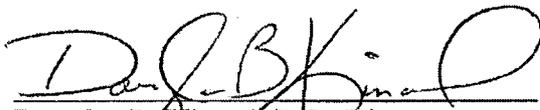


Robert W. King, Jr., P.E.  
Deputy Commissioner  
Environmental Quality Control

Date: 12/4/06

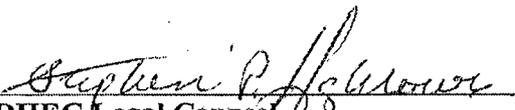
*for*   
Alton C. Boozek  
Chief, Bureau of Water

Date: 11-22-06



Douglas B. Kinard, P.E., Director  
Water Enforcement Division  
Bureau of Water

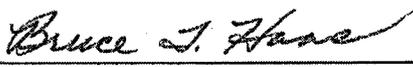
Date: 11.17.06



Stephen P. Holloway  
DHEC Legal Counsel

Date: 11/27/06

I CONSENT:



Bruce Haas, Regional Director  
Utilities Services of South Carolina, Inc.

Date: 11/14/06

# **BNC 2.12 SC-C**

**THE STATE OF SOUTH CAROLINA BEFORE THE DEPARTMENT OF HEALTH  
AND ENVIRONMENTAL CONTROL**

---

**IN RE: UTILITIES SERVICES OF SOUTH CAROLINA, INC.  
BARNEY RHETT SUBDIVISION  
PUBLIC WATER SYSTEM (4650018)  
YORK COUNTY**

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**CONSENT ORDER  
05-149-DW**

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Utilities Services of South Carolina, Inc. (Respondent) owns and is responsible for the proper operation and maintenance of the public water system (PWS) that serves the residents of Barney Rhett Subdivision, located in York County, South Carolina.

A review of the Respondent's file by South Carolina Department of Health and Environmental Control (Department) staff revealed that the Respondent failed to properly operate and maintain the Barney Rhett Subdivision PWS.

**IN THE INTEREST OF RESOLVING THIS MATTER** without delay and expense of litigation, the Respondent agrees to the entry of this Consent Order, but neither agrees nor disagrees with the Findings of Fact and Conclusions of Law; and therefore, agrees that this Order shall be deemed an admission of fact and law only as necessary for enforcement of this Order by the Department or subsequent actions relating to the Respondent by the Department.

**FINDINGS OF FACT**

1. Utilities Services of South Carolina, Inc. (Respondent) owns and is responsible for the proper operation and maintenance of the public water system (PWS) that serves the residents of Barney Rhett Subdivision, located in York County, South Carolina.

2. The Barney Rhett Subdivision PWS consists of a single groundwater well, a water distribution system, and forty-four (44) taps which serve a population of one hundred thirteen (113).
3. On October 1, 2002, the Respondent legally assumed ownership and responsibility for the Barney Rhett Subdivision PWS.
4. On September 14, 2004, the Department conducted a sanitary survey of the Barney Rhett Subdivision PWS, which resulted in an overall "Unsatisfactory" rating. The following areas were rated as "Unsatisfactory":
  - A. Protection from Contamination: the pad around the well is cracked and must be replaced;
  - B. Storage Maintenance: the water storage tank is in poor condition and must be evaluated and up-graded.
5. On April 25, 2005, the Department conducted a sanitary survey of the Barney Rhett Subdivision PWS, which resulted in an overall "Unsatisfactory" rating. The following areas were rated as "Unsatisfactory":
  - A. Protection from Contamination: the pad around the well is cracked and must be replaced, and there is a hole in the side of the casing, which must be repaired;
  - B. Storage Maintenance: the water storage tank is in poor condition and must be evaluated and up-graded.
5. On June 16, 2005, Department staff held an enforcement conference with Bruce Haas, the regional director for Utilities Services of South Carolina, Inc., to discuss the violations. Bruce Haas stated that he is in the process of obtaining a contract with the City of Rock Hill for the purchase of bulk water service for both the Barney Rhett Subdivision and the

Hickory Hills Subdivision. The Hickory Hills Subdivision PWS (4650025) is currently interconnected to the City of Rock Hill via an emergency connection. The possibility of a Consent Order was discussed.

### CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the Department, pursuant to the State Safe Drinking Water Act, S.C. Code Ann. §§ 44-55-10 to 120 (2002), reaches the following Conclusions of Law:

1. The Respondent violated the State Primary Drinking Water Regulations, 24A S.C. Code Ann. Regs. 61-58.7(B) (Supp. 2004), in that it failed to properly operate and maintain the Barney Rhett Subdivision PWS.
2. The State Safe Drinking Water Act, S.C. Code Ann. § 44-55-90(B) (2002), provides for a civil penalty not to exceed five thousand dollars (\$5,000.00) a day per violation for any person violating the Act.

**NOW, THEREFORE, IT IS ORDERED, CONSENTED TO AND AGREED**, pursuant to the State Safe Drinking Water Act, S.C. Code Ann. §§ 44-55-10 to 120 (2002), that the Respondent shall:

1. Henceforth, operate and maintain the Barney Rhett PWS in accordance with applicable state and federal laws and regulations.
2. By October 1, 2005, obtain from the City of Rock Hill, documentation of its willingness to provide bulk water service for both the Barney Rhett Subdivision and Hickory Hills Subdivision; and by October 15, 2005 submit an application to the Public Service Commission (PSC) for approval of interconnections of the PWSs serving these subdivisions with the PWS of the City of Rock Hill.

3. Within thirty (30) days of the PSC's final approval of the interconnections for bulk water service, submit to the Department for review and approval a submittal package for (a) the connection of the Barney Rhett Subdivision PWS to the City of Rock Hill PWS and (b), if necessary, for the permanent connection of the Hickory Hills Subdivision PWS to the City of Rock Hill PWS. The submittal packages shall include in detail, the plans, basis for design (including calculations) and specifications per State Primary Drinking Water Regulations, 24A S.C. Code Ann. Regs. 61-58.1 (Supp. 2004). The submittal packages shall also include a completed application for a permit to construct.
4. Within thirty (30) days of the issuance of the permits to construct, complete the connections of both the Barney Rhett Subdivision PWS and Hickory Hills Subdivision PWS to the City of Rock Hill PWS, and schedule an inspection with the Department's Region 3 Lancaster Environmental Quality Control District office at (803) 285-7461 to obtain final approval to operate from the Department.
5. Within ninety (90) days of the completion of the connections to the City of Rock Hill PWS, have a South Carolina certified well driller properly abandon the existing wells at the Barney Rhett Subdivision PWS and Hickory Hills Subdivision PWS; submit well close-out logs (Form 1903) to the Department; and, contact the Department's Region 3 Lancaster Environmental Quality Control District office at (803) 285-7461 to verify proper abandonment.

**THE PARTIES FURTHER STIPULATE** that the Respondent shall pay a civil penalty of two thousand five hundred fifty dollars (\$2,550.00) should it fail to comply with any requirement pursuant to this Consent Order, including any implementation schedule approved by the Department. Such penalties shall be due and payable upon written notice to the Respondent.

The Department's determination that a requirement has been missed shall be final. All penalties due under this paragraph shall be made payable to the South Carolina Department of Health and Environmental Control within thirty (30) days of notification by the Department. The stipulated penalties set forth above shall be in addition to any other remedies or sanctions which may be available to the Department by reason of the Respondent's failure to comply with the requirements of this Order. The Department's determination that the requirements have not been met shall be final.

**PURSUANT TO THIS ORDER**, communications regarding this Order and its requirements are to include the Order number and shall be addressed as follows:

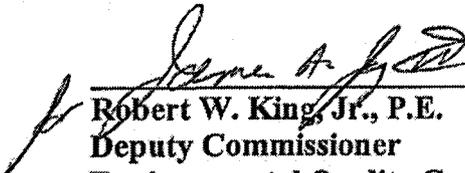
Jeff Schrag  
Bureau of Water-Enforcement Division  
S.C. Department of Health and Environmental Control  
2600 Bull Street  
Columbia, S.C. 29201

**IT IS FURTHER ORDERED AND AGREED** that this Consent Order governs only Utilities Services of South Carolina, Inc.'s liability to the Department for civil sanctions arising from the matters set forth herein and constitutes the entire agreement between the Department and Utilities Services of South Carolina, Inc. with respect to the resolution and settlement of the matters set forth herein. The parties are not relying upon any representations, promises, understandings, or agreements except as expressly set forth within this Order.

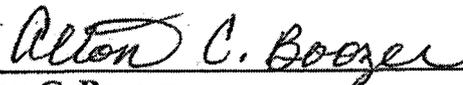
**IT IS FURTHER ORDERED AND AGREED** that failure to comply with any provision of this Order shall be grounds for further enforcement action pursuant to the State Safe Drinking Water Act, S.C. Code Ann. § 44-55-80(A) (2002), to include the assessment of additional civil penalties.

[Signature Page Follows]

FOR THE SOUTH CAROLINA DEPARTMENT  
OF HEALTH AND ENVIRONMENTAL CONTROL

  
\_\_\_\_\_  
Robert W. King, Jr., P.E.  
Deputy Commissioner  
Environmental Quality Control

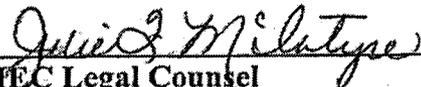
Date: 10/18/05

  
\_\_\_\_\_  
Alton C. Boozer  
Chief, Bureau of Water

Date: 10/04/05

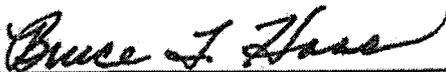
  
\_\_\_\_\_  
Douglas B. Kinard, P.E., Director  
Water Enforcement Division  
Bureau of Water

Date: 10-4-05

  
\_\_\_\_\_  
DHEC Legal Counsel

Date: October 7, 2005

I/WE CONSENT:

  
\_\_\_\_\_  
Bruce Haas, Regional Director  
Utilities Services of South Carolina, Inc.

Date: 10/4/05

# **BNC 2.12 SC-D**

**THE STATE OF SOUTH CAROLINA  
BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

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**IN RE: UTILITIES SERVICES OF SOUTH CAROLINA, INC.  
FOXWOOD SUBDIVISION  
YORK COUNTY**

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**CONSENT ORDER  
05-099 -W**

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Utilities Services of South Carolina, Inc. (Respondent) owns and is responsible for the proper operation and maintenance of a wastewater treatment facility (WWTF) serving the residents of Foxwood Subdivision located in York County, South Carolina.

The Respondent violated the Pollution Control Act, S.C. Code Ann. §§ 48-1-10 et seq. (1987 & Supp. 2002) and National Pollutant Discharge Elimination System (NPDES) Permit SC0027189 in that it exceeded the permitted discharge limits for ammonia-nitrogen (NH<sub>3</sub>-N), biochemical oxygen demand (BOD), fecal coliform bacteria (FC), phosphorous and total suspended solids (TSS) as specified in the NPDES permit.

In accordance with approved procedures and based upon discussions with the Respondent's agents on August 12, 2003, the parties have agreed to the issuance of this Order to include the following Findings of Fact and Conclusions of Law.

**IN THE INTEREST OF RESOLVING THIS MATTER** without delay and expense of litigation, the Respondent agrees to the entry of this Consent Order, but neither agrees nor disagrees with the Findings of Fact or the Conclusion of Law; and therefore, agrees that this Order shall be deemed an admission of fact and law only as necessary for enforcement of this Order by the

Department or subsequent actions relating to the Respondent by the Department.

### FINDINGS OF FACT

1. The Respondent owns and is responsible for the proper operation and maintenance of a WWTF serving the residents of Foxwood Subdivision located at 0.6 miles east of S.C. Road #674 and 1.4 miles north of S.C. Highway #160 in York County, South Carolina.
2. South Carolina Department of Health and Environmental Control (Department) staff issued NPDES Permit SC0027146 to the Respondent, allowing it to discharge treated wastewater to Sugar Creek to the Catawba River in accordance with effluent limitations, monitoring requirements and other conditions set forth therein.
3. The Respondent exceeded the permitted discharge limits for BOD during March and June 2004. The Respondent also exceeded the permitted discharge limits for FC during January and July 2004, and phosphorous during March, June, July and August 2004. The Respondent reported these violations on Discharge Monitoring Reports (DMRs) submitted to the Department.
4. On March 18, 2004, Department Enforcement staff issued a Notice of Violation (NOV) to the Respondent as a result of violations of the permitted discharge limit for FC in January 2004. Since Bruce Haas, Regional Director for the Respondent, commented on the DMR for January 2004 that the sample collected on January 6, 2004, to be analyzed for FC had chlorine in it when collected, and that the two (2) subsequent samples were well within limits, no response was required by the Department.
5. On June 30, 2004, Department Enforcement staff issued a NOV to the Respondent as a result of violations of the permitted discharge limits for BOD and phosphorous during March 2004,

and phosphorous during May 2004. Since Mr. Haas attributed the violations in March 2004 to higher flows and lower water temperature due to eighteen inches (18") of snow, and the May 2004 violation to the WWTF not being designed to reduce phosphorous, no response was required by the Department.

6. On October 14, 2004, Department Enforcement staff held an Enforcement Conference with Mr. Haas and the Respondent's attorney, Mr. John Hoefer. Mr. Haas indicated that the WWTF was not designed to meet the current phosphorous limits. Mr. Haas stated that the Respondent needs to know if any of the other permit limits will change before making final plans to upgrade the WWTF; the Respondent will have to delay the upgrade until it receives a wasteload allocation from the Department. Mr. Haas attributed the July 2004 FC violation to improper sampling by one of the Respondent's operators. The Parties discussed the issuance of a Consent Order containing a civil penalty.

#### CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the Department reaches the following Conclusions of

Law:

1. The Respondent violated the Pollution Control Act, S.C. Code Ann. § 48-1-110 (d) (Supp. 2004), and Water Pollution Control Permits, 24 S.C. Code Ann. Regs. 61-9.122.41(a)(1) (Supp. 2004), in that it exceeded the permitted discharge limits for BOD, FC and phosphorous as specified in Part I.A.1 of the NPDES the permit.
2. The Pollution Control Act, S.C. Code Ann. § 48-1-330 (1987), provides for a civil penalty not to exceed ten thousand dollars (\$10,000.00) per day of violation for any person violating the Act or any rule, regulation, permit, permit condition, final determination, or Order of the

Department.

**NOW, THEREFORE, IT IS ORDERED, CONSENTED TO AND AGREED**, pursuant to the Pollution Control Act, S.C. Code Ann. § 48-1-50 (1987) and § 48-1-100 (Supp. 2004), that the Respondent shall:

1. Henceforth, comply with all permitting and operating requirements in accordance with State and Federal regulations.
2. Within ninety (90) days of the execution date of this Order, submit to the Department three (3) copies of a preliminary engineering report (PER) with a schedule of implementation. The PER shall be administratively and technically complete as required by applicable regulations and prepared in accordance with Standards for Wastewater Facilities Construction, S.C. Code Regs. 61-67 (Supp. 2004). The schedule, upon Department approval, shall be incorporated into and become an enforceable part of this Order. Completion of construction per the schedule shall also become an enforceable part of this Order.
3. Within thirty (30) days of the execution date of this Order, pay to the Department a civil penalty in the amount of eight thousand four hundred dollars (\$8,400.00).

**THEREFORE IT IS FURTHER ORDERED AND AGREED** that if any event occurs which causes or may cause a delay in meeting any of the above scheduled dates for completion of any specified activity, the Respondent shall notify the Department in writing at least one (1) week before the scheduled date, describing in detail the anticipated length of the delay, the precise cause or causes of delay, if ascertainable, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which those measures will be implemented.

The Department shall provide written notice as soon as practicable that a specified extension

of time has been granted or that no extension has been granted. An extension shall be granted for any scheduled activity delayed by an event of *force majeure*, which shall mean any event arising from causes beyond the control of the Respondent that causes a delay in or prevents the performance of any of the conditions under this Consent Order including, but not limited to: a) acts of God, fire, war, insurrection, civil disturbance, explosion; b) adverse weather condition that could not be reasonably anticipated causing unusual delay in transportation and/or field work activities; c) restraint by court order or order of public authority; d) inability to obtain, after exercise of reasonable diligence and timely submittal of all applicable applications, any necessary authorizations, approvals, permits, or licenses due to action or inaction of any governmental agency or authority; and e) delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence by the Respondent.

Events which are not *force majeure* include by example, but are not limited to, unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or any person's failure to exercise due diligence in obtaining governmental permits or fulfilling contractual duties. Such determination will be made in the sole discretion of the Department. Any extension shall be incorporated by reference as an enforceable part of this Consent Order and thereafter be referred to as an attachment to the Consent Order.

**PURSUANT TO THIS ORDER**, all communication regarding this Order and its requirements, shall be addressed as follows:

Tom J. Richmond  
SCDHEC - Bureau of Water  
2600 Bull Street  
Columbia, S.C. 29201

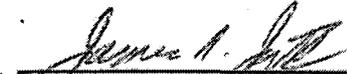
**THE RESPONDENT SHALL CONFIRM** in writing the completion of Order requirements to the above address within five (5) days of completion. The Order number should be included on all checks remitted as payment of the civil penalty.

**IT IS FURTHER ORDERED AND AGREED** that failure to comply with any provision of this Order shall be grounds for further enforcement action pursuant to the Pollution Control Act, S.C. Code Ann. § 48-1-330 (1987), to include the assessment of additional civil penalties.

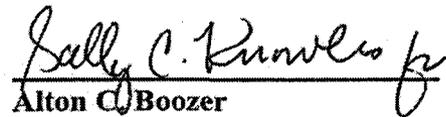
**IT IS FURTHER ORDERED AND AGREED** that this Consent Order governs only Utilities Services of South Carolina, Inc.'s liability to the Department for civil sanctions arising from the matters set forth herein and constitutes the entire agreement between the Department and Utilities Services of South Carolina, Inc. with respect to the resolution and settlement of the matters set forth herein. The parties are not relying upon any representations, promises, understandings, or agreements except as expressly set forth in this Order.

[Signature page follows]

FOR THE SOUTH CAROLINA DEPARTMENT  
OF HEALTH AND ENVIRONMENTAL CONTROL

  
\_\_\_\_\_  
Robert W. King, Jr., P.E.,  
Deputy Commissioner  
Environmental Quality Control

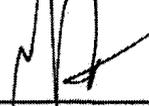
DATE: 7/21/05

  
\_\_\_\_\_  
Alton C. Boozer  
Bureau Chief  
Bureau of Water

DATE: 7/13/05

  
\_\_\_\_\_  
Douglas B. Kinard, P.E., Director  
Water Enforcement Division  
Bureau of Water

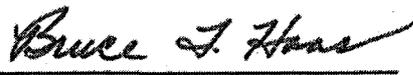
DATE: 7/13/05

  
\_\_\_\_\_  
DHEC Legal Counsel

DATE: 7/15/05

WE CONSENT:

UTILITES SERVICES OF SOUTH CAROLINA, INC.

  
\_\_\_\_\_  
Bruce Haas  
Regional Director

DATE: 7/12/05

# **BNC 2.12 SC-E**

**THE STATE OF SOUTH CAROLINA  
BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

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**CAROLINA WATER SERVICE, INC.  
GLENN VILLAGE II SUBDIVISION  
SYSTEM NUMBER 3250058  
LEXINGTON COUNTY**

---

**CONSENT ORDER  
05-094-DW**

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Carolina Water Service, Inc. (Respondent) owns and is responsible for the proper operation and maintenance of the public water system (PWS) that supplies water to the residents of the Glenn Village II Subdivision, located in Lexington County, South Carolina.

South Carolina Department of Health and Environmental Control (Department) records reveal that the combined Radium 226 and 228 sample results for the Respondent's PWS produced running annual averages (RAA) that exceeded the maximum contaminant level (MCL) for combined Radium 226 and 228 during the compliance periods of July 2003 – June 2004, October 2003 – September 2004, and January 2004 – December 2004.

In accordance with approved procedures, the parties have agreed to the issuance of this Order to include the following Findings of Fact and Conclusions of Law.

**IN THE INTEREST OF RESOLVING THIS MATTER** without delay and expense of litigation, the Respondent agrees to the entry of this Consent Order, but neither agrees nor disagrees with the Findings of Fact and Conclusions of Law; and therefore, agrees that this Order shall be deemed an admission of fact and law only as necessary for enforcement of this Order by the Department or subsequent actions relating to the Respondent by the Department.

## FINDINGS OF FACT

1. Carolina Water Service, Inc. (Respondent) owns and is responsible for the proper operation and maintenance of the public water system (PWS) that supplies water to the residents of the Glenn Village II Subdivision, located in Lexington County, South Carolina.
2. The Respondent's PWS consists of two (2) wells and a water distribution system that services one hundred ninety-six (196) taps and a primary population of six hundred (600) residents.
3. The Respondent's PWS is required to be monitored on a quarterly basis for combined Radium 226 and 228. The MCL for combined Radium 226 and 228 is five (5) picocuries/Liter (pCi/L). Compliance for the MCL for combined Radium 226 and 228 is based upon the RAA result for four (4) consecutive quarterly samples. The referenced PWS experienced violations when the RAA results for combined Radium 226 and 228 exceeded the MCL for the compliance periods of July 2003 – June 2004, October 2003 – September 2004, and January 2004 – December 2004 as indicated below:

<u>Compliance Period</u>	<u>Results</u>	<u>RAA</u>
July – September 2003	5.6 pCi/L	–
October – December 2003	2.6 pCi/L	–
January – March 2004	11.0 pCi/L	–
April – June 2004	6.4 pCi/L	6 pCi/L
July – September 2004	7.4 pCi/L	7 pCi/L
October – December 2004	9.7 pCi/L	9 pCi/L

4. On July 7, 2004, October 5, 2004, and December 29, 2004, Notices of Violation (NOV) were issued to the Respondent for the referenced PWS for exceedances of the MCL for combined Radium 226 and 228 during the compliance periods indicated above.

5. On April 14, 2005, Department staff held an enforcement conference with the Respondent to discuss the above-referenced violations. The parties discussed possible remedies and the issuance of a Consent Order.

### CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the Department, pursuant to the State Safe Drinking Water Act, S.C. Code Ann. §§ 44-55-10 to 120 (2002), reaches the following Conclusions of Law:

1. The Respondent has violated the State Primary Drinking Water Regulations, 24A S.C. Code Ann. Regs. 61-58.5(H) (Supp. 2004), in that the referenced PWS exceeded the MCL for combined Radium 226 and 228 during the compliance periods of July 2003 – June 2004, October 2003 – September 2004, and January 2004 – December 2004.
2. The State Safe Drinking Water Act, S.C. Code Ann. § 44-55-90(B)(1) (2002), provides for a civil penalty not to exceed five thousand dollars (\$5,000.00) a day per violation for any person violating the Act.

**NOW, THEREFORE, IT IS ORDERED, CONSENTED TO AND AGREED**, pursuant to the State Safe Drinking Water Act, S.C. Code Ann. §§ 44-55-10 to 120 (2002), that the Respondent shall:

1. Henceforth, operate and maintain the Glenn Village II PWS in accordance with applicable State and Federal laws and regulations.
2. By September 15, 2005, submit to the Department a corrective action plan (CAP) detailing the procedures and a proposed schedule for addressing the referenced PWS's violations. This CAP will be reviewed by the Department, and upon approval, the CAP and schedule shall be incorporated into and become an enforceable part of this Order.

**PURSUANT TO THIS ORDER**, communications regarding this Order and its requirements are to include the Order number and shall be addressed as follows:

Jennifer Kellett  
S.C. Department of Health and Environmental Control  
Bureau of Water  
Drinking Water Enforcement Section  
2600 Bull Street  
Columbia, SC 29201

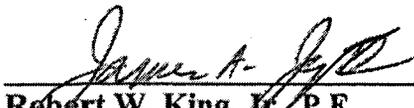
**THE PARTIES FURTHER STIPULATE** that the Respondent shall pay a civil penalty of three thousand four hundred dollars (\$3,400.00) should it fail to comply with any requirement established pursuant to this Consent Order, including any implementation schedule approved by the Department. Such penalties shall be due and payable upon written notice to the Respondent. The Department's determination that a schedule has been missed shall be final. All penalties due under this paragraph shall be made payable to the South Carolina Department of Health and Environmental Control within thirty (30) days of notification by the Department. The stipulated penalties set forth above shall be in addition to any other remedies or sanctions which may be available to the Department by reason of the Respondent's failure to comply with the requirements of this Order. The Department's determination that the requirements have not been met shall be final.

**IT IS FURTHER ORDERED AND AGREED** that this Consent Order governs only Carolina Water Service, Inc.'s liability to the Department for civil sanctions arising from the matters set forth herein and constitutes the entire agreement between the Department and Carolina Water Service, Inc. with respect to the resolution and settlement of the matters set forth herein. The parties are not relying upon any representations, promises, understandings or agreements except as expressly set forth within this Order.

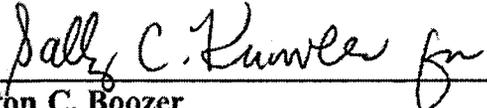
**IT IS FURTHER ORDERED AND AGREED** that failure to comply with the terms of this Order shall be deemed a violation of the State Safe Drinking Water Act, S.C. Code Ann. § 44-

55-80(A) (2002), and may subject the Respondent to further enforcement actions to include the assessment of additional civil penalties.

**FOR THE SOUTH CAROLINA DEPARTMENT  
OF HEALTH AND ENVIRONMENTAL CONTROL**

*for*   
\_\_\_\_\_  
**Robert W. King, Jr., P.E.  
Deputy Commissioner  
Environmental Quality Control**

Date: 7/19/05

  
\_\_\_\_\_  
**Alton C. Boozer  
Bureau Chief  
Bureau of Water**

Date: 7/13/05

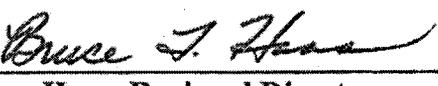
  
\_\_\_\_\_  
**Douglas B. Kinard, P.E., Director  
Water Enforcement Division  
Bureau of Water**

Date: 7/12/05

  
\_\_\_\_\_  
**DHEC Legal Counsel**

Date: 7/14/05

**I/WE CONSENT:**

  
\_\_\_\_\_  
**Bruce Haas, Regional Director  
Carolina Water Service, Inc.**

Date: 7/12/05

# **BNC 2.12 SC-F**

**THE STATE OF SOUTH CAROLINA  
BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

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**IN RE: UNITED UTILITY COMPANY, INC.  
BRIARCREEK SUBDIVISION I WWTF  
CHEROKEE COUNTY**

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**CONSENT ORDER  
04-180-W**

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United Utility Company, Inc. (Respondent) owns and is responsible for the proper operation and maintenance of a wastewater treatment facility (WWTF) serving the Briarcreek Subdivision located in Cherokee County, South Carolina.

The Respondent violated the Pollution Control Act, S.C. Code Ann. §§ 48-1-10 et seq. (1987 & Supp. 2003), and National Pollutant Discharge Elimination System (NPDES) Permit SC0023736 in that it failed to comply with the permitted discharge limits for ammonia-nitrogen (NH<sub>3</sub>-N), as required by its NPDES Permit.

In accordance with approved procedures and based upon discussions with the Respondent's agents on July 13, 2004, the parties have agreed to the issuance of this Order to include the following Findings of Fact and Conclusions of Law.

**FINDINGS OF FACT**

1. The Respondent owns and is responsible for the proper operation and maintenance of a WWTF serving the Briarcreek Subdivision located in Cherokee County, South Carolina.
2. South Carolina Department of Health and Environmental Control (Department) staff issued NPDES Permit SC0023736 to the Respondent authorizing the discharge of treated

wastewater into Spencers Branch to Gilkey Creek to Thicketty Creek to the Broad River in accordance with the effluent limitations, monitoring requirements and other conditions set forth therein.

3. The Respondent reported violations of the permitted discharge limits for  $\text{NH}_3\text{-N}$  on discharge monitoring reports (DMRs) submitted to the Department for the September 2003 and February 2004 monitoring periods.
4. On October 31, 2003, Department staff issued a Notice of Violation to the Respondent for violations of the permitted discharge limits for  $\text{NH}_3\text{-N}$  during September 2003. The Respondent's agent included comments on the September 2003 DMR, attributing the  $\text{NH}_3\text{-N}$  violation to a blockage in the Return Activated Sludge (RAS) line.
5. The Respondent's agent included comments on the February 2004 DMR, attributing the  $\text{NH}_3\text{-N}$  violation to possible laboratory error, as the on-site field  $\text{NH}_3\text{-N}$  test kit did not detect ammonia, and there were no operational problems at the WWTF. The Respondent's agent collected eight (8) additional  $\text{NH}_3\text{-N}$  samples during February 2004, all of which reflected  $\text{NH}_3\text{-N}$  levels of less than one milligram per liter (1 mg/L).
6. Department staff held an enforcement conference with agents for the Respondent on July 13, 2004, to discuss the above-cited violations. During the conference, the Respondent's agents stated that the first  $\text{NH}_3\text{-N}$  violation was caused by a blockage in the RAS line. Once the blockage was cleared,  $\text{NH}_3\text{-N}$  levels returned to compliance. The second  $\text{NH}_3\text{-N}$  violation was thought to be a lab error, but the contract lab did not have enough sample to re-analyze both total nitrogen and  $\text{NH}_3\text{-N}$  to confirm the Respondent's suspicions. The Respondent's operator collected eight (8) additional samples during that month, and all additional samples

reflected NH<sub>3</sub>-N levels less than one milligram per liter (1.0 mg/L). The Respondent's agent provided copies of the laboratory data verifying the results of the additional NH<sub>3</sub>-N testing. The parties discussed the issuance of a Consent Order containing possible civil penalties.

### CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the Department reaches the following Conclusions of

Law:

1. The Respondent violated the Pollution Control Act, S.C. Code Ann. § 48-1-110 (d) (Supp. 2003), and Water Pollution Control Permits, 24 S.C. Code Ann. Regs. 61-9.122.41(a) (Supp. 2003), in that it failed to comply with the permitted discharge limits for NH<sub>3</sub>-N, as required by NPDES Permit SC0023736.
2. The Pollution Control Act, S.C. Code Ann. § 48-1-330 (1987), provides for a civil penalty not to exceed ten thousand dollars (\$10,000.00) per day of violation for any person violating the Act or any rule, regulation, permit, permit condition, final determination, or Order of the Department.

**NOW, THEREFORE, IT IS ORDERED, CONSENTED TO AND AGREED**, pursuant to the Pollution Control Act, S.C. Code Ann. § 48-1-50 (1987), and § 48-1-100 (Supp. 2003), that the Respondent shall:

1. Henceforth, operate and maintain the WWTF in accordance with the NPDES Permit and Department regulations and guidelines.
2. Within thirty (30) days of the execution date of this Order, submit to the Department a corrective action plan (CAP) addressing compliance with NH<sub>3</sub>-N limits. The CAP shall include an implementation schedule which upon Department approval shall be incorporated

into and become an enforceable part of this Order.

3. Within thirty (30) days of the execution date of this Order, pay to the Department a civil penalty in the amount of three thousand dollars (\$3,000.00).

**PURSUANT TO THIS ORDER**, communications regarding this Order and its requirements, shall be addressed as follows:

Heather L. Beard  
Water Enforcement Division  
South Carolina Department of Health and Environmental Control  
2600 Bull Street  
Columbia, South Carolina 29201

The Respondent shall confirm, in writing, completion of Order requirements to the above address within ten (10) days of completion. The Order number should be included on all checks remitted as payment of the civil penalty.

**IT IS FURTHER ORDERED AND AGREED** that if any event occurs which causes or may cause a delay in meeting any of the above scheduled dates for completion of any specified activity, the Respondent shall notify the Department in writing at least one (1) week before the scheduled date, describing in detail the anticipated length of the delay, the precise cause or causes of delay, if ascertainable, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which those measures will be implemented.

The Department shall provide written notice as soon as practicable that a specified extension of time has been granted or that no extension has been granted. An extension shall be granted for any scheduled activity delayed by an event of *force majeure*, which shall mean any event arising from causes beyond the control of the Respondent that causes a delay in or prevents the performance of any of the conditions under this Consent Order including, but not limited to: a) acts of God, fire,

war, insurrection, civil disturbance, explosion; b) adverse weather conditions that could not be reasonably anticipated causing unusual delay in transportation and/or field work activities; c) restraint by court order or order of public authority; d) inability to obtain, after exercise of reasonable diligence and timely submittal of all applicable applications, any necessary authorizations, approvals, permits, or licenses due to action or inaction of any governmental agency or authority; and e) delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence by the Respondent.

Events which are not *force majeure* include by example, but are not limited to, unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or any person's failure to exercise due diligence in obtaining governmental permits or fulfilling contractual duties. Such determination will be made in the sole discretion of the Department. Any extension shall be incorporated by reference as an enforceable part of this Consent Order and hereafter be referred to as an attachment to the Consent Order.

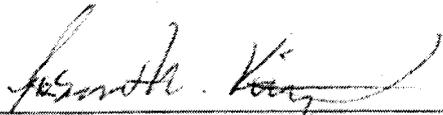
**IT IS FURTHER ORDERED AND AGREED** that this Order constitutes the entire agreement between the parties with respect to the resolution and settlement of matters set forth herein. The parties are not relying upon any representations, promises, understandings or agreements except as expressly set forth within this Order.

**United Utility Company, Inc.** understands that this Consent Order governs only the liability for civil sanctions arising from the matters set forth herein and does not affect or purport to affect any criminal liability or liability to any entity not a party to this Order.

**IT IS FURTHER ORDERED AND AGREED** that failure to comply with any provision of this

Order shall be grounds for further enforcement action pursuant to the Pollution Control Act, S.C. Code Ann. § 48-1-330 (1987), to include the assessment of additional civil penalties.

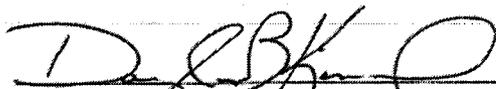
**FOR THE SOUTH CAROLINA DEPARTMENT  
OF HEALTH AND ENVIRONMENTAL CONTROL**

  
\_\_\_\_\_  
Robert W. King, Jr., P.E.  
Deputy Commissioner  
Environmental Quality Control

Date: 10/10/04

  
\_\_\_\_\_  
Alton C. Boozer  
Bureau Chief  
Bureau of Water

Date: 09/24/04

  
\_\_\_\_\_  
Douglas B. Kinard, P.E., Director  
Water Enforcement Division  
Bureau of Water

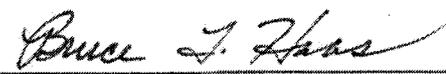
Date: 9/24/04

  
\_\_\_\_\_  
Etta R. Williams  
DHEC Legal Counsel

Date: 9/30/04

**WE CONSENT:**

**United Utility Company, Inc.**

  
\_\_\_\_\_

Date: 9/22/04

# **BNC 2.12 SC-G**

THE STATE OF SOUTH CAROLINA  
BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

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IN RE: CAROLINA WATER SERVICE, INC.  
RIVER HILLS SUBDIVISION  
YORK COUNTY

---

CONSENT ORDER  
04-140-W

---

Carolina Water Service, Inc. (Respondent) owns and is responsible for the proper operation and maintenance of a wastewater collection system (WWCS) consisting of sewer lines and pump stations (PSs) serving the residents of River Hills Subdivision located in York County, South Carolina.

The Respondent violated the Pollution Control Act, S.C. Code Ann. §§ 48-1-10 et seq. (1987 & Supp. 2002) in that it discharged untreated wastewater into the environment, including waters of the State, in a manner other than in compliance with a permit issued by the Department.

In accordance with approved procedures and policy, the Department has determined that it is necessary and appropriate to issue this Order to include the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. On November 5, 2001, the Respondent's agent reported a Sanitary Sewer Overflow (SSO) on Autumn Cove Road. The SSO report indicated that an air relief valve on a force main malfunctioned, causing the SSO. The Respondent's agent estimated that five hundred

(500) gallons of wastewater were spilled, although none entered waters of the State. The Respondent's agents had a contractor clean up the wastewater and lime the affected area. The report indicated that the relief valve would be repaired or replaced. The Respondent's agent indicated that the relief valve was newly permitted and installed and was within the warranty period.

2. On November 22, 2002, the Respondent's agent reported a SSO at the manhole located at 12 Oakwood Lane. The report indicated that approximately four hundred (400) gallons of wastewater was discharged and entered waters of the State. The report also indicated that roots present in the sewer line caused the SSO. The Respondent's agents hired a contractor to remove the roots from the sewer line. The Respondent's agents cleaned up the debris and limed the affected area.
3. On December 8, 2002, the Respondent's agent reported a SSO at the PS located at 55 Marina Road (PS #26). The SSO report indicated that the transformer at the PS was out of service following an ice storm that had occurred three (3) days previously. The Respondent had an electrician replace the transformer. The Respondent's agents cleaned the affected area. The report indicated that an undisclosed amount of wastewater entered waters of the State.
4. On December 24, 2002, the Respondent's agent reported a SSO at the PS located behind 52 Fairway Ridge Road (PS #14). The SSO report attributed the discharge to high flows caused by heavy rains. The Respondent's agents also identified as a source of inflow an exposed sewer clean-out that appeared to have been damaged during golf course maintenance and landscaping undertaken by third parties at the golf course. The Respondent's agents stated

that this landscaping had the effect of increasing or diverting flows toward the broken cleanout and an adjacent manhole, thereby exacerbating the inflow resulting from the heavy rains. The Respondent's agents repaired the clean-out, grouted and raised the manhole, and cleaned the affected area. The report indicated that approximately three thousand (3,000) gallons of wastewater were discharged, with wastewater entering waters of the State.

5. In a letter to the Respondent's agent dated January 7, 2003, Department staff informed the Respondent's agent that the Department had received several letters from residents of River Hills Subdivision who were concerned about the recent SSOs. Department staff requested a detailed report from the Respondent regarding corrective actions taken or planned to prevent SSOs.
6. In a letter to Department staff dated February 7, 2003, the Respondent's agent outlined its Contingency Plan for Pump Station Failure, Routine Pump Station Inspection and Maintenance Program, Sewer Cleaning and Repair Program and Response Action Plan.
7. On March 20, 2003, the Respondent's agent reported a SSO at the manhole closest to PS #14. The report attributed the SSO to heavy rainfall, and indicated that the Respondent's agents televised the sewer line and walked the line to look for infiltration sources. The Respondent's agents limed and cleaned the affected area. The SSO report indicated that approximately two thousand (2,000) gallons of wastewater were discharged, and that the wastewater entered waters of the State.
8. In a letter to Department staff dated March 26, 2003, the Respondent's agent indicated that the Respondent's employees had identified an area of sewer line that seemed to be the

source of most of the flow that resulted in the SSO on March 20, 2003. The Respondent's agent stated that the section of line was replaced on March 25, 2003.

9. On April 10, 2003, the Respondent's agent reported a SSO at PS #26. The SSO report attributed the SSO to inflow and infiltration (I&I) caused by heavy rainfall, and indicated that the Respondent's agents had cleaned up the debris and had televised the sewer line to locate the source of the I&I. The report estimated that two thousand four hundred (2,400) gallons of wastewater entered waters of the State.

#### CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the Department reaches the following Conclusions of Law:

1. The Respondent violated the Pollution Control Act, S.C. Code Ann. § 48-1-90(a)(Supp. 1987), in that it discharged wastewater into the environment, including waters of the State, in a manner other than in compliance with a permit issued by the Department.
2. The Pollution Control Act, S.C. Code Ann. § 48-1-330 (1987), provides for a civil penalty not to exceed ten thousand dollars (\$10,000.00) per day of violation for any person violating the Act or any rule, regulation, permit, permit condition, final determination, or Order of the Department.

**NOW, THEREFORE, IT IS ORDERED**, pursuant to the Pollution Control Act, S.C. Code Ann § 48-1-50 (1987) and § 48-1-100 (Supp. 2002), that the Respondent shall:

1. Henceforth, comply with all permitting and operating requirements in accordance with State and Federal regulations.

2. Beginning immediately upon execution of this Order, within twenty-four (24) hours after detection, or on the next business day if an SSO occurs on a weekend or holiday, orally report to the Department all SSOs which enter surface waters of the State or which exceed five hundred (500) gallons. Within five (5) days after each detection, submit a written report to the Department for any and all reportable SSOs in accordance with DHEC's Sanitary Sewer Overflow or Pump Station Failure Report Form.
3. Within sixty (60) days of the date of execution of this Order, begin development of an audit and a comprehensive management plan for the wastewater collection system (WWCS). The management plan shall include, but is not limited to the following: 1) expenditures related to operation and maintenance costs, as well as repair work, to demonstrate a proper financial commitment to the WWCS; 2) PS inspection and maintenance schedules; 3) a sewer inspection and cleaning program; 4) I&I evaluations, including special flow monitoring of the drainage basins for PS #14 and PS #26; 5) manhole inspections; 6) logs/records of daily operations; 7) easement/right-of-way maintenance; 8) a spare parts inventory; and 9) any other components necessary for proper operation and maintenance of the WWCS.
4. Within two hundred forty (240) days of the date of execution date of this Order, the management plan shall be finalized and implemented.
5. Within one hundred eighty (180) days of the date of execution of this Order, submit to the Department a corrective action plan and schedule to address priority deficiencies in the WWCS (PSs, manholes, line breaks/deterioration, etc.). When approved by the Department, the schedule shall become an enforceable part of this Order.

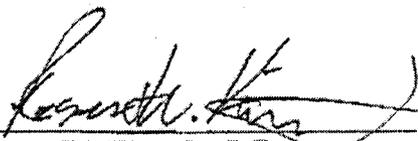
6. Within one hundred eighty (180) days of the date of execution of this Order, submit to the Department a summary report of corrective actions taken to date addressing deficiencies in the WWCS, including, but not limited to, an estimate of the amount of I&I eliminated in the drainage basins for PS #14 and PS #26. Within one hundred eighty (180) days thereafter, and every subsequent one hundred eighty (180) days until the conclusion of the approved schedule period, submit additional summary reports of such corrective actions.
7. Within thirty (30) days of the execution date of this Order, pay to the Department a civil penalty in the amount of nine thousand six hundred dollars (\$9,600.00).

**PURSUANT TO THIS ORDER**, all communication regarding this Order and its requirements shall be addressed as follows:

Anastasia Hunter-Shaw  
Water Enforcement Division  
Bureau of Water  
SCDHEC  
2600 Bull Street  
Columbia, S.C. 29201

**IT IS FURTHER ORDERED AND AGREED** that failure to comply with any provision of this Order shall be grounds for further enforcement action.

THE SOUTH CAROLINA DEPARTMENT OF  
HEALTH AND ENVIRONMENTAL CONTROL



Robert W. King, Jr., P.E.  
Deputy Commissioner  
Environmental Quality Control

DATE: 7/30/04



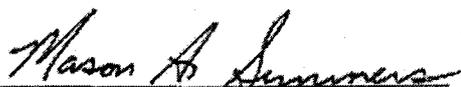
Alton C. Boozer, Chief  
Bureau of Water

DATE: 07/27/04



Director, Water Enforcement Division

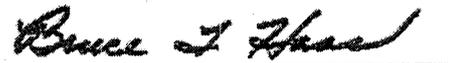
DATE: 7-27-04



Attorney for the Department

DATE: 7/23/04

WE CONSENT:



Carolina Water Service, Inc.

DATE: 7/26/04

# **BNC 2.12 SC-H**

**THE STATE OF SOUTH CAROLINA BEFORE THE DEPARTMENT OF  
HEALTH AND ENVIRONMENTAL CONTROL**

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**IN RE: UTILITIES SERVICES OF SOUTH CAROLINA, INC.  
FARROWOOD ESTATES (4050012)  
RICHLAND COUNTY**

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**CONSENT ORDER  
04-073-DW**

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Utilities Services of South Carolina, Inc. (Respondent) owns, operates and maintains a public water system (PWS) that serves the residents of Farrowood Estates in Richland County, South Carolina.

Inspections of the Respondent's PWS by South Carolina Department of Health and Environmental Control (Department) staff revealed that the Respondent failed to properly operate and maintain its PWS.

In accordance with approved procedures, the parties have agreed to the issuance of this Order to include the following Findings of Fact and Conclusions of Law.

**FINDINGS OF FACT**

1. Utilities Services of South Carolina, Inc. (Respondent) owns, operates and maintains a public water system (PWS) that serves the residents of Farrowood Estates in Richland County, South Carolina.
2. The Respondent's PWS consists of two (2) groundwater wells, one (1) fifteen thousand (15,000) gallon storage tank and a water distribution system that serves one hundred fifty (150) service connections.
3. On October 1, 2002, the Respondent legally assumed ownership and

responsibility for the above-referenced PWS.

4. On June 12, 2003, Department personnel performed a Sanitary Survey of the Respondent's PWS. The PWS received an "unsatisfactory" rating due to the following deficiencies:
  - A. The current number of service connections exceeds the system capacity with the largest well out of service.
  - B. The Respondent has not repainted the storage tank located next to well #1. It has rust spots and needs to be addressed.
  - C. The Respondent has not properly maintained the well #1 well house. It has a leak in the roof and a significant amount of water damage.
5. On December 3, 2003, the Department issued to the Respondent Operating Permit No. 4050012 requiring the Respondent to address water quantity and operation and maintenance deficiencies at the PWS.
6. On March 4, 2004, per telephone conversation with Department staff, the Respondent stated the deficiencies as listed in Item #4, B and C had been addressed.

#### CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the Department, pursuant to the State Safe Drinking Water Act, S.C. Code Ann. §§ 44-55-10 et seq. (2002), reaches the following Conclusions of Law:

1. The Respondent violated the State Primary Drinking Water Regulations, 24A S.C. Code Ann. Regs. 61-58.7 (Supp. 2003), in that it failed to properly operate and maintain the PWS.

2. The State Safe Drinking Water Act, S.C. Code Ann. § 44-55-90(b) (2002) provides for a civil penalty not to exceed five thousand dollars (\$5,000.00) a day per violation for any person violating the Act.

**NOW, THEREFORE, IT IS ORDERED, CONSENTED TO AND AGREED,** pursuant to the State Safe Drinking Water Act, S.C. Code Ann. §§ 44-55-10 et seq. (2002), that the Respondent shall:

1. Henceforth, operate and maintain the PWS in accordance with all applicable State and Federal laws and regulations.
2. Within fifteen (15) days of the execution date of this Order, notify the Department in writing of your intent to resolve system capacity deficiencies by either interconnecting with another approved PWS, installing a new well(s) or through redevelopment of the existing well(s).
3. If the Respondent chooses to resolve system capacity through redevelopment of the existing well(s), the Respondent shall take the appropriate actions necessary to obtain final approval to place into operation from the Department by August 1, 2004.
4. If the Respondent chooses to interconnect with another approved PWS, the Respondent shall take the appropriate actions necessary to obtain final approval to place into operation from the Department by September 1, 2004.
5. If the Respondent chooses to install a new well(s), the Respondent shall take the appropriate actions necessary to obtain final approval to place the new well(s) into operation from the Department by July 1, 2005.
6. By June 1, 2004, schedule an inspection to verify completion of, all operation and

maintenance deficiencies as listed above in Item # 4, B and C under Findings of Fact. The Respondent shall contact Department staff of the Central Midlands District at 803-896-0620 to schedule the inspection.

**THE PARTIES FURTHER STIPULATE** that the Respondent shall pay a civil penalty of three thousand dollars (\$3,000.00) should it fail to comply with any requirement established pursuant to this Consent Order, including any implementation schedule approved by the Department. Such penalties shall be due and payable upon written notice to the Respondent. The Department's determination that a schedule has been missed shall be final. All penalties due under this paragraph shall be made payable to the South Carolina Department of Health and Environmental Control within thirty (30) days of notification by the Department. The stipulated penalties set forth above shall be in addition to any other remedies or sanctions which may be available to the Department by reason of the Respondent's failure to comply with the requirements of this Order. The Department's determination that the requirements have not been met shall be final.

**IT IS FURTHER ORDERED AND AGREED** that if any event occurs which causes or may cause a delay in meeting any of the above-scheduled dates for completion of any specified activity pursuant to the approved schedule, the Respondent shall notify the Department in writing at least five (5) days before the scheduled date, if practicable, as determined by the Department. The Respondent shall describe in detail the anticipated length of the delay, the precise cause or causes of delay (if ascertainable), the measures taken or to be taken to prevent or minimize the delay, and the timetable by which the Respondent proposes that those measures will be implemented.

The Department shall provide written notice to the Respondent as soon as

practicable that a specific extension of time has been granted or that no extension has been granted. An extension shall be granted for any scheduled activity delayed by an event of *force majeure*, which shall mean any event arising from causes beyond the control of the Respondent that causes a delay in or prevents the performance of any of the conditions under this Consent Order including, but not limited to: a) acts of God, fire, war, insurrection, civil disturbance, or explosion; b) adverse weather conditions that could not be reasonably anticipated causing unusual delay in transportation and/or field work activities; c) restraint by court order or order of public authority; d) inability to obtain, after exercise of reasonable diligence and timely submittal of all applicable applications, any necessary authorizations, approvals, permits, or licenses due to action or inaction of any governmental agency or authority; and e) delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence by the Respondent.

Events which are not *force majeure* include by example, but are not limited to, unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure by the Respondent to exercise due diligence in obtaining governmental permits or performing any other requirement of this Order or any procedure necessary to provide performance pursuant to the provisions of this Order. Any extension shall be granted at the sole discretion of the Department, incorporated by reference as an enforceable part of this Consent Order, and, thereafter, be referred to as an attachment to the Consent Order.

**IT IS FURTHER ORDERED AND AGREED** that failure to comply with any provision of this Order shall be grounds for further enforcement action pursuant to the

State Safe Drinking Water Act, S.C. Code Ann. § 44-55-80(a) (2002), to include the assessment of additional civil penalties.

**PURSUANT TO THIS ORDER**, all requirements to be submitted to the Department shall be addressed as follows:

Karen L. Ramos  
Bureau of Water-Enforcement Division  
S.C. Department of Health and Environmental Control  
2600 Bull Street  
Columbia, S.C. 29201

THE SOUTH CAROLINA DEPARTMENT OF  
HEALTH AND ENVIRONMENTAL CONTROL

Robert W. King, Jr.

Robert W. King, Jr., P.E.  
Deputy Commissioner  
Environmental Quality Control

DATE 4/06/04

Alton C. Boozer

Alton C. Boozer, Chief  
Bureau of Water

DATE 03/31/04

WE CONSENT:

Bruce T. Haas

Bruce T. Haas, Regional Director  
Utilities Services of South Carolina, Inc.

DATE 3/29/04

Sam Finkler

Attorney for the Department

DATE 3/31/04

Valerie A. Betterton

Valerie A. Betterton, Director  
Water Enforcement Division

DATE 3/30/04

# **BNC 2.12 SC-I**

**THE STATE OF SOUTH CAROLINA BEFORE THE DEPARTMENT OF  
HEALTH AND ENVIRONMENTAL CONTROL**

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**IN RE: UTILITIES SERVICES OF SOUTH CAROLINA, INC.  
WASHINGTON HEIGHTS (4050013)  
RICHLAND COUNTY**

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**CONSENT ORDER  
04-072-DW**

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Utilities Services of South Carolina, Inc. (Respondent) owns, operates and maintains a public water system (PWS) that serves the residents of Washington Heights in Richland County, South Carolina.

Inspections of the Respondent's PWS by South Carolina Department of Health and Environmental Control (Department) staff revealed that the Respondent failed to properly operate and maintain its PWS.

In accordance with approved procedures, the parties have agreed to the issuance of this Order to include the following Findings of Fact and Conclusions of Law.

**FINDINGS OF FACT**

1. Utilities Services of South Carolina, Inc. (Respondent) owns, operates and maintains a public water system (PWS) that serves the residents of Washington Heights in Richland County, South Carolina.
2. The Respondent's PWS consists of two (2) groundwater wells, one (1) ten thousand (10,000) gallon storage tank and a water distribution system that serves seventy-eight (78) service connections.

3. On October 1, 2002, the Respondent legally assumed ownership and responsibility for the above-referenced PWS.
4. On June 12, 2003, Department personnel performed a Sanitary Survey of the Respondent's PWS. The PWS received an "unsatisfactory" rating due to the following deficiencies:
  - A. The current number of service connections exceeds the system capacity with the largest well out of service.
  - B. The Respondent has not cleaned the storage tank located next to well #1. It is covered with lichens and needs to be addressed.
  - C. The Respondent has not properly maintained the well #2 well house. The well house is dilapidated and in need of repair.

#### **CONCLUSIONS OF LAW**

Based upon the above Findings of Fact, the Department, pursuant to the State Safe Drinking Water Act, S.C. Code Ann. §§ 44-55-10 et seq. (2002), reaches the following Conclusions of Law:

1. The Respondent violated the State Primary Drinking Water Regulations, 24A S.C. Code Ann. Regs. 61-58.7 (Supp. 2003), in that it failed to properly operate and maintain the PWS.
2. The State Safe Drinking Water Act, S.C. Code Ann. § 44-55-90(b) (2002), provides for a civil penalty not to exceed five thousand dollars (\$5,000.00) a day per violation for any person violating the Act.

**NOW, THEREFORE, IT IS ORDERED, CONSENTED TO AND AGREED,** pursuant to the State Safe Drinking Water Act, S.C. Code Ann. §§ 44-55-10 et seq.

(2002), that the Respondent shall:

1. Henceforth, operate and maintain the PWS in accordance with all applicable State and Federal laws and regulations.
2. Within fifteen (15) days of the execution date of this Order, notify the Department in writing of your intent to resolve system capacity deficiencies by either interconnecting with another approved PWS, installing a new well(s) or through redevelopment of the existing well(s).
3. If the Respondent chooses to resolve system capacity through redevelopment of the existing well(s), the Respondent shall take the appropriate actions necessary to obtain final approval to place into operation from the Department by December 15, 2004.
4. If the Respondent chooses to interconnect with another PWS, the Respondent shall take the appropriate actions necessary to obtain final approval to place into operation from the Department by January 1, 2005.
5. If the Respondent chooses to install a new well(s), the Respondent shall take the appropriate actions necessary to obtain final approval to place the new well(s) into operation from the Department by September 1, 2005.
6. By July 1, 2004, complete and schedule an inspection to verify completion of, all operation and maintenance deficiencies as listed above in Item # 4, B and C under Findings of Fact. The Respondent shall contact Department staff of the Central Midlands Environmental Quality Control District at (803) 896-0620 to schedule the inspection.

**THE PARTIES FURTHER STIPULATE** that the Respondent shall pay a civil

penalty of three thousand dollars (\$3,000.00) should it fail to comply with any requirement established pursuant to this Consent Order, including any implementation schedule approved by the Department. Such penalties shall be due and payable upon written notice to the Respondent. The Department's determination that a schedule has been missed shall be final. All penalties due under this paragraph shall be made payable to the South Carolina Department of Health and Environmental Control within thirty (30) days of notification by the Department. The stipulated penalties set forth above shall be in addition to any other remedies or sanctions which may be available to the Department by reason of the Respondent's failure to comply with the requirements of this Order. The Department's determination that the requirements have not been met shall be final.

**IT IS FURTHER ORDERED AND AGREED** that if any event occurs which causes or may cause a delay in meeting any of the above-scheduled dates for completion of any specified activity pursuant to the approved schedule, the Respondent shall notify the Department in writing at least five (5) days before the scheduled date, if practicable, as determined by the Department. The Respondent shall describe in detail the anticipated length of the delay, the precise cause or causes of delay (if ascertainable), the measures taken or to be taken to prevent or minimize the delay, and the timetable by which the Respondent proposes that those measures will be implemented.

The Department shall provide written notice to the Respondent as soon as practicable that a specific extension of time has been granted or that no extension has been granted. An extension shall be granted for any scheduled activity delayed by an event of *force majeure*, which shall mean any event arising from causes beyond the control of the Respondent that causes a delay in or prevents the performance of any of the

conditions under this Consent Order including, but not limited to: a) acts of God, fire, war, insurrection, civil disturbance, or explosion; b) adverse weather conditions that could not be reasonably anticipated causing unusual delay in transportation and/or field work activities; c) restraint by court order or order of public authority; d) inability to obtain, after exercise of reasonable diligence and timely submittal of all applicable applications, any necessary authorizations, approvals, permits, or licenses due to action or inaction of any governmental agency or authority; and e) delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence by the Respondent.

Events which are not *force majeure* include by example, but are not limited to, unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure by the Respondent to exercise due diligence in obtaining governmental permits or performing any other requirement of this Order or any procedure necessary to provide performance pursuant to the provisions of this Order. Any extension shall be granted at the sole discretion of the Department, incorporated by reference as an enforceable part of this Consent Order, and, thereafter, be referred to as an attachment to the Consent Order.

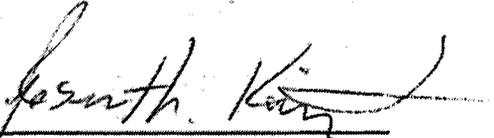
**IT IS FURTHER ORDERED AND AGREED** that failure to comply with any provision of this Order shall be grounds for further enforcement action pursuant to the State Safe Drinking Water Act, S.C. Code Ann. § 44-55-80(a) (2002), to include the assessment of additional civil penalties.

PURSUANT TO THIS ORDER, all requirements to be submitted to the

Department shall be addressed as follows:

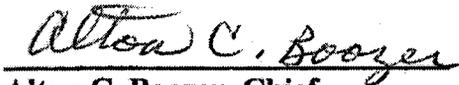
Karen L. Ramos  
Bureau of Water-Enforcement Division  
S.C. Department of Health and Environmental Control  
2600 Bull Street  
Columbia, S.C. 29201

**THE SOUTH CAROLINA DEPARTMENT OF  
HEALTH AND ENVIRONMENTAL CONTROL**



**Robert W. King, Jr., P.E.  
Deputy Commissioner  
Environmental Quality Control**

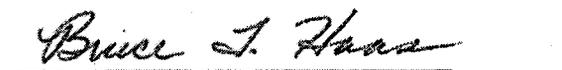
DATE 4/06/04



**Alton C. Boozar, Chief  
Bureau of Water**

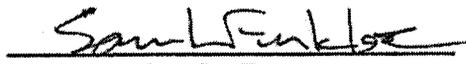
DATE 03/31/04

**WE CONSENT:**



**Bruce T. Haas, Regional Director  
Utilities Services of South Carolina, Inc.**

DATE 3/29/04



**Sam Funk  
Attorney for the Department**

DATE 3/31/04



**Valerie A. Betterton, Director  
Water Enforcement Division**

DATE 3/30/04

**BNC 2.12 NC**

STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

DOCKET NO. W-354, SUB 266

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of  
Application by Carolina Water Service, Inc. )  
of North Carolina, 2335 Sanders Road, ) ORDER GRANTING PARTIAL  
Northbrook, Illinois, for Authority to Increase ) RATE INCREASE AND REQUIRING  
Rates for Water and Sewer Utility Service in ) CUSTOMER NOTICE  
All of Its Service Areas in North Carolina )

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street,  
Raleigh, North Carolina on Monday, October 4, 2004 at 7:00 p.m.

Municipal Building, Meeting Room, 102 Town Hall Drive, Kill Devil Hills,  
North Carolina on Wednesday, October 6, 2004, at 7:00 p.m.

Jacksonville City Hall, Council Chambers, 211 Johnson Boulevard,  
Jacksonville, North Carolina on Thursday, October 7, 2004, at 7:00 p.m.

Charlotte-Mecklenburg Government Center, Chamber Meeting Room CH-  
14, 600 East Fourth Street, Charlotte, North Carolina on Thursday,  
October 14, 2004 at 7:00 p.m.

Buncombe County Courthouse, Courtroom, Fifth Floor, 60 Court Plaza,  
Asheville, North Carolina, on Wednesday, October 20, 2004, at 7:00 p.m.

Watauga County Courthouse, Courtroom #1, 842 West King Street,  
Boone, North Carolina on Thursday, October 21, 2004, at 7:00 p.m.

Commission Hearing Room, Dobbs Building, 430 North Salisbury Street,  
Raleigh, North Carolina on Tuesday, December 14, 2004 at 9:00 a.m.

BEFORE: Commissioner Sam J. Ervin, IV, Presiding, Commissioner J. Richard  
Conder, Commissioner Robert V. Owens, Jr., and Commissioner Michael  
S. Wilkins<sup>1</sup>.

APPEARANCES:

For Carolina Water Service, Inc. of North Carolina:

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<sup>1</sup> Commissioner Michael S. Wilkins left the Commission prior to decision-making in this proceeding.

Edward S. Finley, Jr., Hunton & Williams, P.O. Box 109, Raleigh, North Carolina  
27602

For the Using and Consuming Public:

Gina C. Holt and Robert B. Cauthen, Jr., Staff Attorneys, Public Staff - North  
Carolina Utilities Commission, 4326 Mail Service Center, Raleigh, North Carolina  
27699-4326

**BY THE COMMISSION:** On May 29, 2003, Carolina Water Service, Inc. of North Carolina (CWS, Applicant, or Company) filed a letter notifying the Commission of its intent to file a general rate case as required by Commission Rule R1-17(a). On April 28, 2004, CWS and the Public Staff of the North Carolina Utilities Commission (Public Staff) filed a partial settlement in this and certain other proceedings in which CWS, the Public Staff and other parties stipulated to the appropriate capital structure, cost of capital and rate of return, and the allocation of certain rate case costs among various Utilities, Inc. subsidiaries, including CWS, for purposes of this and several other proceedings.

On July 7, 2004, CWS filed an application for a general rate increase in which it sought Commission approval to increase its rates for water and sewer service in its franchised service areas so as to produce a 28.07 percent increase in gross revenues compared to the level of gross revenues produced from existing rates.

By Order dated August 5, 2004, the Commission declared this matter to be a general rate case; suspended the proposed new rates for a period of up to 270 days pending further investigation and hearing; and scheduled this matter for hearing in Raleigh, Kill Devil Hills, Jacksonville, Charlotte, Asheville, and Boone, North Carolina. The Company was required to provide customer notice of the hearings and the proposed rate increase to all customers.

On August 18, 2004, CWS filed a motion to supplement its general rate case application in which the Company requested Commission approval to include two stand-alone utilities that are owned by Utilities, Inc. and that have rates that match CWS's uniform rates in this proceeding.

On August 20, 2004, the Commission entered an Order Accepting Revisions to Schedules and Modifying Notice in which the Commission allowed CWS's request to modify its application and required the alteration of the approved customer notice to reflect this amendment to the application.

On September 14, 2004, CWS filed a Certificate of Service indicating that the public notice had been provided in accordance with the Commission's procedural order.

Public hearings were held as scheduled. The following public witnesses testified at the public hearings held in this case:

October 4--Raleigh	George Pence, Lawrence Lehr, Susan Bourland, Florence Keith, Kaye Moore
October 6--Kill Devil Hills	Alicia McDonald, Pat Couper, Jim O'Connell, Suzanne Davis, Hugh McCain, Phillip Dombeck
October 7--Jacksonville	Lena Butler, Donald Shipley, Gwen Slade
October 14--Charlotte	Steven Smith, Perry Rivers, Robert Sitze, Ken Goodnight, Lynda Cayax, Susan Noel, Cline McGee, Steve White, Susan Hambright, Jeffrey Adair, Don Cherry
October 20--Asheville	Richard Braby, Warren Johnson, Dieter Hammer, James Hemphill, Bill West, Skip Williams, Ruth Hellerman, Richard Engle, James Tanner
October 21--Boone	William Kaiser, James Wood, Harvey Bauman, Larry Finnegan, Alex Popper
December 14--Raleigh	Steven Smith

No party filed an intervention petition in the form required by Commission Rules R1-5 and R1-19.

On October 15, 2004, CWS filed the testimony and exhibits of Steven M. Lubertozi, Director of Regulatory Accounting for CWS. On November 19, 2004, the Public Staff filed the testimony and exhibits of Katherine A. Fernald, Supervisor, Water Section, Accounting Division, Windley E. Henry, Staff Accountant, Accounting Division, John R. Hinton, Financial Analyst, Economic Research Division, and Jay B. Lucas, Utilities Engineer, Water Division. On December 3, 2004, CWS filed the rebuttal testimony and exhibits of Carl Daniel, Regional Vice-President for CWS, Steven M. Lubertozi, and Kirsten E. Weeks, Senior Regulatory Accountant for CWS.

This matter came on for evidentiary hearing in Raleigh as scheduled on December 14-15, 2004. The Applicant presented the direct testimony of Steven Lubertozi. The Public Staff presented the testimony of its witnesses Lucas, Hinton, Henry, and Fernald. The Company presented the rebuttal testimony of Company witnesses Daniel, Weeks, and Lubertozi.

Subsequent to the hearing there were filings made by the Public Staff and the Company pursuant to the request of the Chairman at the conclusion of the December 14 hearing.

On January 4, 2005, Public Staff witness Fernald filed her late-filed exhibit.

On January 5, 2005, the Company filed revised rebuttal exhibits and schedules and the late-filed exhibits of Company witnesses Lubertozzi and Weeks. The Company also filed as a late-filed exhibit a memorandum from the office of PricewaterhouseCoopers accounting firm. On January 7, 2005, the Company filed amendments to the revised exhibits and schedules of Steven Lubertozzi and Kirsten Weeks that it had previously filed. On January 11, 2005, CWS filed the Affidavit of Carl Daniel.

On January 12, 2005, the Public Staff filed revised exhibits and schedules and the late-filed exhibits and schedules of Public Staff witnesses Fernald, Henry and Lucas.

Based on the application, the testimony and exhibits, and the entire record in this proceeding, the Commission makes the following

## FINDINGS OF FACT

### General Matters

1. CWS is a corporation duly organized under the laws of and is authorized to do business in the State of North Carolina. It is a franchised public utility providing water and/or sewer service to customers in this State.
2. CWS is properly before the Commission, pursuant to Chapter 62 of the General Statutes of North Carolina, for a determination of the justness and reasonableness of its proposed rates.
3. The test period appropriate for use in this proceeding is the twelve months ended December 31, 2003, updated to June 30, 2004.
4. CWS operates 81 water utility systems and 38 sewer utility systems, some of which serve multiple subdivisions. These water and sewer utility systems are spread throughout North Carolina. All of the service areas are mainly residential; however, some have retail and commercial customers receiving service.
5. According to CWS's billing data, there were approximately 22,200 end-of-period residential equivalent units (REUs) receiving water utility service and approximately 14,636 end-of-period REUs receiving sewer utility service.

6. There were approximately 1,820 end-of-period water availability customers in the Carolina Forest and Woodrun service areas.

7. CWS provides metered water utility service to all of its water customers except for approximately 1,233 unmetered or flat rate REUs in the following service areas: Sherwood Forest, Misty Mountain, Crystal Mountain, Mount Mitchell Lands, Watauga Vista, High Vista, High Meadows, Powder Horn, and part of Sugar Mountain.

8. CWS provides flat rate service to all of its residential sewer customers and provides metered sewer service to all of its commercial sewer customers except for the former Mercer Environmental sewer systems. CWS acquired the Mercer sewer systems in July 2003, and the Commission granted separate rates based on the existing Mercer rates in effect before the acquisition.

9. CWS's existing and proposed water service rates are as follows:

Monthly Metered Service:

	<u>Existing</u>	<u>CWS's Proposed</u>
Base Facilities Charges (zero usage)		
A. Residential Single Family Residence	\$ 10.10	\$ 13.75
B. Where Service is Provided Through a Master Meter and Each Dwelling Unit is Billed Individually	\$ 10.10	\$ 13.75
C. Where Service is Provided Through a Master Meter and a Single Bill is Rendered for the Master Meter (As in a Condominium Complex)	\$ 9.10	\$ 12.39
D. Commercial and Other (Based on Meter Size): 5/8" x 3/4" meter	\$ 10.10	\$ 13.75
1" meter	\$ 25.25	\$ 34.38
1-1/2" meter	\$ 50.50	\$ 68.76
2" meter	\$ 80.80	\$ 110.02
3" meter	\$ 151.50	\$ 206.28
4" meter	\$ 252.50	\$ 343.81
6" meter	\$ 505.00	\$ 687.61

Usage Charge:

A.	Treated Water/1,000 gallons	\$ 3.03	\$ 4.02
B.	Untreated Water/1,000 gallons (Brandywine Bay Irrigation Water)	\$ 2.00	\$ 2.66

Monthly Flat Rate Service:

A.	Single Family Residential	\$ 21.65	\$ 29.48
B.	Commercial/SFE (SFE is a single family equivalent)	\$ 21.65	\$ 29.48

Availability Rates (semi-annual):

Applicable only to property owners in Carolina Forest and Woodrun Subdivision in Montgomery County	\$ 12.00	\$ 16.34
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10. The miscellaneous charges and fees of the Company will remain unchanged.

11. The management fees of the Company will remain unchanged.

12. CWS's existing and proposed sewer service rates are as follows:

Monthly Metered Service: Commercial and Other Non-Residential Users:

A. Base Facility Charges (based on meter size with zero usage)

	<u>Existing</u>	<u>CWS's Proposed</u>
5/8" x 3/4" meter	\$ 10.10	\$ 12.90
1" meter	\$ 25.25	\$ 32.20
1-1/2" meter	\$ 50.50	\$ 64.40
2" meter	\$ 80.80	\$103.00
3" meter	\$151.50	\$193.10
4" meter	\$252.50	\$321.80
6" meter	\$505.00	\$643.70
B. Usage Charge/1,000 gallons (based on metered water usage)	\$ 4.55	\$ 5.80
C. Minimum Monthly Charge	\$ 30.55	\$ 38.94

D. Sewer customers who do not receive water service from the Company (per SFE or Single Family Equivalent)	\$ 30.55	\$ 38.94
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Monthly Flat Rate Service:

Per Dwelling Unit	\$ 30.55	\$ 38.94
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Monthly Collection Service Only

(When sewage is collected by utility and transferred to another entity for treatment)

A. Single Family Residence	\$ 11.00	\$ 14.00
B. Commercial/SFE	\$ 11.00	\$ 14.00

Mt. Carmel Subdivision Service Area:

Monthly Base Facility Charge	\$ 4.60	\$ 5.90
Usage Charge/1,000 gallons (based on metered water usage)	\$ 4.01	\$ 5.11

Regalwood and White Oak Estates Subdivision Service Areas:

A. Monthly Flat Rate Sewer Service:

Residential Service	\$ 25.75	\$ 38.94
White Oak High School	\$956.00	\$1,218.50
Child Castle Daycare	\$122.56	\$ 156.20
Pantry	\$ 67.18	\$ 85.60
Circle K	\$247.85	\$ 315.90

13. CWS's water and sewer systems are adequately maintained and operated and CWS is providing adequate water and sewer service.

Rate Base

14. The appropriate level of total plant in service is \$82,973,405, of which \$49,093,439 is applicable to water operations and \$33,879,966 is applicable to sewer operations.

15. The appropriate level of accumulated depreciation for use in this proceeding is \$13,898,212, of which \$7,622,463 is applicable to water operations and \$6,275,749 is applicable to sewer operations.

8 yrs 33

16. The appropriate depreciation rate for computer equipment additions recorded after June 30, 2004, is 12.50%.

17. The appropriate levels of cash working capital are \$425,911 for water operations and \$422,603 for sewer operations.

18. The appropriate level of contributions in aid of construction (CIAC), net of amortization, for use in this proceeding is \$18,536,122 for water operations and \$15,416,949 for sewer operations.

19. In the Quail Ridge system, the Company undercollected connection fees by \$250 per tap from 1993 to 1996. In 1996, the Company realized its error, and began collecting the correct fee.

20. It is the responsibility of a utility company's management to collect its authorized rates, including connection charges and plant modification fees (hereinafter referred to as connection fees) and management fees.

21. On October 12, 1992, the Commission issued an order in Docket No. W-354, Sub 111 (Sub 111) requiring that the Company file all new contracts within 30 days from signing with the Chief Clerk of the Commission.

22. The order issued in Sub 111 also required that the Company obtain prior approval to deviate from its uniform connection fees in both existing and new service areas.

23. Since October 12, 1992, the Company has waived connection fees for an area in Mt. Carmel, and in the Windward Cove and Lamplighter Village South systems, without obtaining prior Commission approval to do so.

24. Under the agreement with Huber Construction in the Mt. Carmel service area, the Company has collected a \$750 connection fee on behalf of the Buncombe/Asheville sewer district (MSD), and has collected for itself a connection fee of \$1,055, which is \$45 less than the uniform connection fee. The Company did not obtain prior Commission approval to vary from its authorized connection fee in this system.

25. In its order issued on March 22, 1994, in Docket No. W-354, Sub 118 (Sub 118), the Commission required that CWS, once and for all, conform its tariffs to reflect the connection fees actually being charged. Furthermore, the Commission stated that future deviations would not be tolerated.

26. It is the responsibility of the Company's management to comply with the Commission's orders and tariffs.

27. In the systems where the Company failed to collect its authorized uniform connection fees, and failed to obtain prior Commission approval to vary from those fees, the uniform connection fees should be imputed.

28. On August 27, 1996 the Commission issued an order in Docket No. M-100, Sub 113, requiring that all water and sewer companies cease collecting gross-up on CIAC received after June 12, 1996.

29. The August 27, 1996, order also required that all water and sewer companies which had collected gross-up after June 12, 1996, refund any amounts collected to the contributors with 10% interest per annum and file a notarized report with the Commission of the refunds made.

30. The Company failed to file the notarized report on the gross-up refunds as required in the August 27, 1996 order.

31. Although the contracts for Cambridge, Southwoods, Matthews Commons, Lamplighter Village South, and Bradford Park did not specifically list the amount of gross-up included in the total connection fee, these contracts were entered into during the time that gross-up was required, and the fees set forth in the contracts included gross-up.

32. The Company has collected gross-up on CIAC collected after June 12, 1996, in the Cambridge, Southwoods, Matthews Commons, Lamplighter Village South, and Bradford Park systems.

33. It is appropriate to require the Company to refund the gross-up collected after June 12, 1996 to the current property owners.

34. An interest rate of 10%, compounded annually, continues to be a just and reasonable rate to use in calculating interest on utility refunds.

35. Since the Company no longer has customer records for the systems that it has sold, it would be difficult to refund the gross-up collected in these systems. <sup>Gross-up</sup> Therefore, these over-collections should be treated as cost-free capital in this and all future proceedings.

36. For some systems, the Company has collected reservation of capacity fees from developers for plant costs and capacity.

37. CWS has failed to record reservation of capacity fees in CIAC on its books, as required by the Commission.

38. Just as the cost of money used by the Company during construction is recognized through the calculation of an allowance for funds used during construction

(AFUDC), it is also appropriate to recognize the fact that the Company has the use of the reservation of capacity fees by including these fees in CIAC in this case.

39. The management fee for Covington Cross sewer operations is \$100 per lot.

40. The appropriate amount of accumulated deferred income taxes (ADIT) to deduct from rate base in this proceeding is \$2,920,893 for water operations and \$1,671,871 for sewer operations.

41. CWS has included payments received by the Company in 2001, 2002, and 2003 as plant modification fees as taxable income for tax purposes.

42. CWS has appropriately accounted for the plant modification fees.

43. The appropriate amount of ADIT related to plant modification fees is \$554,465 for water operations and \$422,257 for sewer operations.

44. The appropriate amount of ADIT related to rate case expense to deduct from rate base in this proceeding is \$34,270 for water operations and \$20,651 for sewer operations.

45. The appropriate amount of ADIT related to deferred maintenance costs to be deducted from rate base in this proceeding is \$136,231 for water operations and \$82,088 for sewer operations.

46. The amount of pro forma plant additions included in the calculation of ADIT related to depreciation should not be reduced by the amount of retirements.

47. The appropriate level of deferred charges for use in this proceeding is \$708,721, of which \$482,129 is applicable to water operations and \$226,592 is applicable to sewer operations.

48. The amount of unamortized deferred charges related to maintenance items recommended by the Public Staff is appropriate for use in this proceeding.

49. Based on a three year amortization period and total rate case costs found reasonable elsewhere in this order, the unamortized balance of rate case expense to include in deferred charges is \$142,452.

50. The appropriate level of cost-free capital for use in this proceeding is \$104,308, of which \$48,481 is applicable to water operations and \$55,827 is applicable to sewer operations.

51. CWS's reasonable rate base used and useful in providing service is \$30,372,584, consisting of utility plant in service of \$82,973,405, cash working capital of \$848,514, Water Service Corporation (WSC) rate base of \$256,584, pro forma plant of \$3,597,452, and deferred charges of \$708,721, reduced by accumulated depreciation of \$13,898,212, CIAC, net of amortization, of \$33,953,071, advances in aid of construction of \$44,780, ADIT of \$4,592,764, customer deposits of \$392,487, gain on sale and flow back taxes of \$289,628, plant acquisition adjustment of \$1,880,811, excess capacity of \$122,896, excess book value of \$2,296,948, cost-free capital of \$104,308, and allocation of CWS office plant costs of \$436,187.

### Revenues

52. The appropriate level of end-of-period water service revenue at existing rates is \$6,896,512. The appropriate level of end-of-period sewer service revenue at existing rates is \$5,356,689.

53. It is appropriate to make adjustments to water consumption due to the abnormal usage patterns during the test year.

54. The only billing record data available from the Company is for the years 1992, 1996, 2001, 2002, 2003, and part of 2004. Data from the annual reports is available, but this information is not as accurate as the Company's billing records.

55. Averaging water data from 2001, 2002, and 2003 yields 5,300 gallons per month per water REU. Averaging sewer data from 2001, 2002, and 2003 yields 8,233 gallons per month per metered sewer REU.

56. Based on an average consumption of 5,300 gallons per month per water REU, the water consumption factor for use in this proceeding is 8.1%.

57. The appropriate level of miscellaneous revenue to include in this proceeding is \$271,553, of which \$208,366 relates to water operations and \$63,187 relates to sewer operations.

58. Revenues from antenna space rentals are incidental revenues, and should be included in miscellaneous revenue in this case.

59. The appropriate level of uncollectibles is \$64,407, of which \$36,552 is applicable to water operations and \$27,855 is applicable to sewer operations.

60. Total revenue to be reflected in this proceeding is \$12,460,347, of which \$7,068,326 is applicable to water operations and \$5,392,021 is applicable to sewer operations. Gross service revenue is \$12,253,201, of which \$6,896,512 is applicable to water operations and \$5,356,689 is applicable to sewer operations. Miscellaneous revenue is \$271,553, of which \$208,366 relates to water operations and \$63,187 relates

to sewer operations. Total revenue is reduced by uncollectibles of \$64,407, of which \$36,552 is applicable to water operations and \$27,855 is applicable to sewer operations.

#### Customer Growth

61. The appropriate level of customer growth for use in this proceeding is 5.8% for water operations and 17.6% for sewer operations.

#### Maintenance Expenses

62. The appropriate level of salaries and wages to include in operation and maintenance expense is \$2,200,663, of which \$1,373,215 is applicable to water operations, and \$827,448 is applicable to sewer operations.

63. The salaries for fifteen new certified operators should be included in this case.

64. The appropriate amount of purchased water expense is \$395,489 before any annualization and inflation adjustments.

65. The appropriate level of total maintenance and repairs for use in this proceeding is \$2,026,450, of which \$577,333 is applicable to water operations and \$1,449,117 is applicable to sewer operations.

66. The appropriate level of deferred expenses to include in maintenance and repairs is \$194,976, of which \$129,961 is applicable to water operations and \$65,015 is applicable to sewer operations.

67. The Company has failed to provide evidence supporting any additional deferred expenses above the amount included by the Public Staff in its final schedules.

68. The appropriate amount of sludge hauling expense is \$865,918 before any inflation adjustment.

69. Maintenance expenses should be reduced for operating expenses charged to plant of \$910,414, of which \$568,099 is applicable to water operations and \$342,315 is applicable to sewer operations.

70. The appropriate level of outside services - other for use in this proceeding is \$181,738, of which \$128,284 is applicable to water operations and \$53,454 is applicable to sewer operations.

71. One-half of the legal fees for Pine Knoll Shores should be included in maintenance expenses in this proceeding.

72. The appropriate level of operation and maintenance expenses is \$5,878,350, of which \$3,028,299 is applicable to water operations and \$2,850,051 is applicable to sewer operations.

#### General Expenses

73. The appropriate level of salaries and wages to include in general expenses is \$696,863, of which \$434,843 is applicable to water operations and \$262,020 is applicable to sewer operations.

74. It is appropriate to correct general salaries for reclassification of an operator.

75. The salary of a project manager should be included in this proceeding.

76. The appropriate level of rate case expense to include in this proceeding is \$71,226, of which \$44,445 relates to water operations and \$26,781 relates to sewer operations.

77. An adjustment to legal fees for this proceeding is appropriate.

78. The appropriate amortization period for rate case expense is three years.

79. It is appropriate to include health insurance, pension and 401(k) costs for fifteen new operators and a project manager.

80. The appropriate level of pension and other benefits to include in this proceeding is \$613,126, of which \$382,591 relates to water operations and \$230,536 relates to sewer operations.

81. The appropriate annualization adjustment to be made in this proceeding is \$204,159 for water operations and \$329,769 for sewer operations.

82. The appropriate inflation adjustment to be made in this proceeding is \$175,557, of which \$83,302 is applicable to water operations and \$92,255 is applicable to sewer operations.

83. The appropriate level of general expenses is \$3,038,065, of which \$1,730,751 is applicable to water operations and \$1,307,315 is applicable to sewer operations.

### Depreciation and Taxes

84. The appropriate level of depreciation expense for use in this proceeding is \$1,109,393, of which \$731,150 is applicable to water operations and \$378,243 is applicable to sewer operations.

85. The appropriate level of payroll taxes to include in this proceeding is \$209,134, of which \$139,148 relates to water operations and \$69,986 relates to sewer operations.

86. Based on the other findings and conclusions set forth in this Order, the appropriate level of state income taxes is \$16,046 for water operations and \$0 for sewer operations.

87. Based on the other findings and conclusions set forth in this Order, the appropriate level of federal income taxes is \$67,686 for water operations and \$0 for sewer operations.

88. The appropriate level of depreciation and taxes for use in this proceeding is \$2,176,186, of which \$1,340,556 is applicable to water operations and \$835,630 is applicable to sewer operations.

### Overall Cost of Capital

89. The appropriate capital structure to employ for purposes of this proceeding consists of 57.63% debt and 42.37% equity. The embedded cost of debt associated with this capital structure is 7.28%.

90. The cost of common equity capital to CWS for purposes of this proceeding is 10.7%.

91. The overall fair rate of return that the Company should be allowed the opportunity to earn on its rate base is 8.73%.

### Rates, Fees and Other Matters

92. The Commission finds that the Company's rates should be changed to amounts, which, after pro forma adjustments, will produce an increase in total annual revenue of \$2,171,390. This increase will allow CWS the opportunity to earn an 8.73% overall return on its rate base, which the Commission has found to be reasonable upon consideration of the findings in this Order.

93. The connection charges and plant modification fees currently approved by the Commission are set forth in the tariff sheets attached as Appendix A to this Order.

94. The Company should be responsible for installing all meters, and should no longer accept meters from developers. When meters are installed, the Company is authorized to charge a meter fee of \$50 for 5/8 or 3/4 inch meters, and actual cost for meters greater than 5/8 or 3/4 inch, for all metered water connections.

95. The metering of unmetered water systems should be accomplished as follows:

- a. CWS should solicit preliminary estimates from contractors to be used as a basis for determining the approximate cost of installing meters.
- b. This information should be provided to each homeowners association in the unmetered areas.
- c. If the homeowners association requests that meters be installed, CWS should solicit bids from contractors.
- d. The homeowners association should be allowed to review the final bid amount.
- e. If the homeowners association approves the project based on the final bid amount, CWS should award the contract within 30 days of final approval from the homeowners association and request approval from the Commission for an assessment to recover the cost.

96. Management fees, reservation of capacity fees, payments for main extensions, and other monies received to offset plant costs are CIAC, and should be recorded as such on the Company's books and records.

97. It is appropriate for the Company to make entries on its books to reflect the amount of CIAC found reasonable by the Commission in this case.

98. It would be useful to the Company and both the Commission and Public Staff if there were separate subaccounts for each type of CIAC received by the Company.

99. Both depreciation expense and amortization of CIAC recorded on the Company's books should be calculated based on the actual amounts of plant and CIAC for that period.

100. Because the allocation of pension and 401(k) costs has been and will be corrected in rate cases, it is unnecessary to require the Company to revise its allocation of pension and 401(k) costs on its books.

101. The Company should begin recording revenues from antenna space rentals in water operating revenues under Account 472 - Rents from Water Property.

102. The receipt of plant modification fees should be recognized in the calculation of AFUDC.

103. The sludge hauling and other services provided by Bio-Tech, Inc. (Bio-Tech) to CWS are affiliated transactions covered by G.S. 62-153, and a contract between Bio-Tech and CWS should be filed with the Commission within 30 days of the effective date of this Order.

104. Utilities, Inc. should also file contracts covering the affiliated transactions between Bio-Tech and the North Carolina regulated companies other than CWS within 30 days of the effective date of this Order. The contract for each regulated company should be filed under the applicable docket number for that company.

105. The Company should file all contracts or agreements it has with developers that have not been previously filed with the Chief Clerk of the Commission within 90 days of the effective date of this Order, including but not limited to the contracts for Southwoods / Brandywine, Windward Cove, Mt. Carmel - Harmony, Mr. Carmel - Huber Construction, Lamplighter Village South - Marshall, and Bent Tree (sewer operations).

106. The Company should file all future contracts and agreements within 30 days of signing or agreement.

107. The Company should evaluate its current practices and prepare a new procedure that ensures that the Company will comply with the rules and regulations of the Commission, in particular the rules concerning contiguous extensions and franchises. The Company should file its procedure with the Commission within 60 days of the effective date of this Order.

108. It is not appropriate to impose any penalties as recommended by the Public Staff.

#### EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 - 3

These findings are in the Commission's official records and in the Company's application. They are essentially informational, procedural, and jurisdictional in nature, and matters that they involve are not contested.

## EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 4 - 12

The evidence supporting these findings is contained in the testimony of Public Staff witness Lucas. The Company did not contest these findings.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

The evidence supporting this finding is contained in the testimony of Public Staff witness Lucas and Company witness Daniel. Witness Lucas contacted the regional engineers in each of the various regional offices of the Department of Environment and Natural Resources, Division of Environmental Health, and each indicated that, aside from occasionally exceeding various water quality parameters, CWS was substantially in compliance with the regulations governing community water systems. Witness Lucas inspected 17 water systems. At each location, he found the well houses, treatment facilities, and storage facilities to be well maintained.

Witness Lucas also contacted each of the regional engineers of the Department of Environment and Natural Resources, Division of Water Quality (DWQ), and each indicated that he had a good working relationship with CWS. Other than occasional violations of effluent limits, none of the regional engineers indicated that any of the sewer utility systems were in noncompliance with DWQ's regulations. Witness Lucas inspected 16 sewer utility systems operated by CWS and concluded that each facility was being properly operated and maintained.

The Public Staff received numerous customer complaint letters. A large number of the letters objected to the rate increase itself. Some indicated water quality and water pressure problems. All of the water quality complaints, except for one, were for aesthetic and not for health concerns. These complaints are similar to those made by customers at the public hearings held in various locations across the state in October 2004. The Public Staff recommended that CWS address the customer complaints in its rebuttal and describe the actions it is taking to resolve these complaints.

The one complaint regarding health concerns was made by a customer in Riverpointe Subdivision in Mecklenburg County. This water system has aesthetic problems, pressure problems, and has exceeded the limits for radioactivity. CWS has addressed the high radioactivity by improving its water softening system. More testing over a period of time is needed before the Commission can consider the radioactivity problem solved. This issue is also part of the formal complaint filed by customers in Docket No. W-354, Sub 279, and the aesthetic and pressure problems will be addressed by the Commission in that docket.

Company witness Carl Daniel addressed customer complaints in his rebuttal testimony and indicated that the Company has either contacted or attempted to contact all of the customers who testified at the public hearings.

Based on the foregoing, the Commission concludes that CWS's water and sewer systems are adequately maintained and operated.

**EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 14 - 51**

The evidence supporting these findings is contained in the testimony of Public Staff witnesses Lucas, Fernald and Henry and of Company witnesses Daniel, Weeks and Lubertozzi. The following tables summarize the amounts which the Company and the Public Staff contend are the proper levels of rate base to be used in this proceeding:

**WATER OPERATIONS**

<u>Item</u>	<u>Company</u>	<u>Public Staff</u>	<u>Difference</u>
Plant in service	\$49,093,439	\$49,093,439	\$ 0
Accumulated depreciation	(7,622,380)	(7,622,463)	(83)
Cash working capital	424,033	387,569	(36,464)
Contributions in aid of construction	(18,444,506)	(18,536,122)	(91,616)
Advances in aid of construction	(29,680)	(29,680)	0
Accumulated deferred income taxes	(2,742,295)	(3,396,528)	(654,233)
Customer deposits	(244,912)	(244,912)	0
Gain on sale and flow back taxes	(196,947)	(196,947)	0
Plant acquisition adjustment	(1,166,758)	(1,166,758)	0
Water Service Corporation	160,108	160,108	0
Pro forma plant	1,511,794	1,511,794	0
Deferred charges	484,765	497,569	12,804
Excess capacity	(122,896)	(122,896)	0
Excess book value	(969,448)	(969,448)	0
Cost-free capital	(27,934)	(48,481)	(20,547)
Allocation of CWS office plant cost	<u>(272,181)</u>	<u>(272,181)</u>	<u>0</u>
Original cost rate base	<u>\$19,834,202</u>	<u>\$19,044,063</u>	<u>\$ (790,139)</u>

## SEWER OPERATIONS

<u>Item</u>	<u>Company</u>	<u>Public Staff</u>	<u>Difference</u>
Plant in service	\$33,879,966	\$33,879,966	\$ 0
Accumulated depreciation	(6,275,697)	(6,275,749)	(52)
Cash working capital	419,661	383,757	(35,904)
Contributions in aid of construction	(15,366,589)	(15,416,949)	(50,360)
Advances in aid of construction	(15,100)	(15,100)	0
Accumulated deferred income taxes	(1,652,408)	(2,033,281)	(380,873)
Customer deposits	(147,575)	(147,575)	0
Gain on sale and flow back taxes	(92,681)	(92,681)	0
Plant acquisition adjustment	(714,053)	(714,053)	0
Water Service Corporation	96,476	96,476	0
Pro forma plant	2,085,658	2,085,658	0
Deferred charges	238,474	235,896	(2,578)
Excess capacity	0	0	0
Excess book value	(1,327,500)	(1,327,500)	0
Cost-free capital	0	(55,827)	(55,827)
Allocation of CWS office plant cost	<u>(164,006)</u>	<u>(164,006)</u>	<u>0</u>
 Original cost rate base	 <u>\$10,964,626</u>	 <u>\$10,439,032</u>	 <u>\$ (525,594)</u>

As shown in the preceding tables, the Public Staff and the Company agree on the levels of plant in service, advances in aid of construction, customer deposits, gain on sale, plant acquisition adjustment, Water Service Corporation rate base, pro forma plant, excess capacity, excess book value, and allocation of CWS office plant cost. Therefore, the Commission finds and concludes that the levels agreed to by the parties for these items are appropriate for use in this proceeding.

## ACCUMULATED DEPRECIATION

The only difference between CWS and the Public Staff regarding accumulated depreciation is due to an error made by the Company in calculating accumulated depreciation on computer related equipment recorded on the books after June 30, 2004, through December 14, 2004. The Company calculated accumulated depreciation on computer equipment additions recorded after June 30, 2004, using the composite depreciation rates of 2.12% for water operations and 2.01% for sewer operations. In its original application, CWS calculated depreciation on test year computer equipment using a rate of 12.50%. Public Staff witness Henry calculated accumulated depreciation on all computer related equipment, including amounts added after June 30, 2004, using the depreciation rate of 12.50% for both water and sewer operations.

There is no dispute between the parties on the appropriate depreciation rates to use in this proceeding. CWS simply applied the wrong depreciation rate to computer

related equipment. Correction of this error results in accumulated depreciation of \$13,898,212, of which \$7,622,463 is for water operations and \$6,275,749 is for sewer operations.

### CASH WORKING CAPITAL

The Company and the Public Staff have recommended different amounts of cash working capital as a result of having recommended different levels of expenses and certain taxes. Based upon conclusions regarding the appropriate level of expenses and taxes, the Commission determines that the appropriate levels of cash working capital are \$425,911 for water operations and \$422,603 for sewer operations.

### CONTRIBUTIONS IN AID OF CONSTRUCTION

The parties disagree on the amount of CIAC, net of amortization. The Public Staff recommends an amount of \$18,536,122 for water operations, which is \$91,616 greater than the Company's proposed amount of \$18,444,506. The Public Staff also recommends an amount of \$15,416,949 for sewer operations, which is \$50,360 more than the Company's proposed amount of \$15,366,589. The differences in the level of CIAC recommended by the parties consist of the following items:

<u>Item</u>	<u>Water</u>	<u>Sewer</u>
Impute tap fees	\$ 35,664	\$ 83,942
Refund gross-up	(71,403)	(158,448)
Refund Bradford Park overcollection	(14,707)	(31,933)
Reservation of capacity fees	97,921	109,565
Management fees	44,144	47,232
Rounding differences	<u>(3)</u>	<u>2</u>
Total	<u>\$ 91,616</u>	<u>\$ 50,360</u>

#### Impute Tap Fees

The Public Staff has recommended that CIAC be increased by \$119,606 to impute connection fees. These adjustments fall into three categories: (1) the Quail Ridge system where the Company collected the wrong fee in error, (2) the Mt. Carmel - Carlson agreement, Windward Cove, and Lamplighter Village South systems where the Company varied from its authorized uniform fees, and (3) the Mt. Carmel - Huber agreement where the Company varied from its uniform fees and the parties disagree on the actual amount of fee collected for CWS.

For the Quail Ridge system, Public Staff witness Fernald testified that from 1993 to 1996, the Company collected only \$500 per tap, which is \$250 less than its authorized fee. In 1996, the Company corrected its error and began collecting the

correct amount of connection fee. Witness Fernald made an adjustment to impute the difference of \$250 per tap.

In her rebuttal testimony, Company witness Weeks opposed the Public Staff's adjustment to impute connection fees for Quail Ridge. Although witness Weeks acknowledged that the Company undercollected connection fees in Quail Ridge, she stated that attribution of the undercollection was not justified since the Company's failure to collect the authorized connection fee was inadvertent. Witness Weeks further stated that, of the many connection fees the Company collects each month, from time to time it will make mistakes. Witness Weeks also pointed out that the Company discovered and rectified its undercollections after 1996. In the alternative, witness Weeks stated that if the Commission should impute the difference in connection fees, then the Company should be allowed to assess the current property owners for the amount undercollected.

The Commission concludes that the Public Staff's adjustment to impute connection fees in Quail Ridge is appropriate, but the Company's request to assess its customers for its mistake is not appropriate. The applicable statute to be used in this proceeding is G.S. 62-139, which states, "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." It is clear from this statute that the Company has a duty to charge only fees authorized by the Commission. Although the statute requires that customers not receive a service for less than an amount prescribed by the Commission, it does not address a procedure to be followed if a customer is undercharged or provide a penalty for undercharges of the utility customer. In contrast, G.S. 62-139(b) provides the procedure to be followed for the refunding of overcharges made by a public utility and prescribes a penalty for overcharges that are not timely refunded. Therefore, G.S. 62-139 does not support the Company's proposal to assess customers for undercharges. Additionally, there is no evidence that the customers were even aware that they were being charged fees that were less than those authorized by the Commission, whereas the Company discovered its mistake over eight years ago.

In light of the foregoing, the Commission concludes that it should not approve the Company's proposal to assess customers for undercharges. Additionally, the Commission concludes that it is the responsibility of management of the utility company to collect its authorized rates, including connection fees; that it is not the responsibility of the ratepayers to keep up with the fees that the Company is authorized to collect; that there is no evidence that the customers were even aware that they were being undercharged; and, finally, that the ratepayers should not be required to pay rates to allow a return on plant investment that should have been recovered through authorized connection fee collections. The Commission further concludes that since the Company discovered its error over eight years ago and did not propose an assessment at that

time, it should be estopped from assessing its customers, as it would not be equitable to hold otherwise.

The Public Staff also imputed connection fees related to an agreement with Mr. Mark Carlson (Carlson agreement) for an area in Mt. Carmel, the Windward Cove system, and the Lamplighter Village South system. Public Staff witness Fernald testified that in the December 8, 1993, Carlson agreement and the November 18, 1993, Windward Cove agreement the Company waived connection fees, subject to approval of the North Carolina Utilities Commission. However, these agreements were never filed with the Commission for approval, even though the order granting a rate increase issued in the Sub 111 rate case required that all contracts with developers be filed with the Commission within 30 days of signing. Witness Fernald further testified that the Company failed to disclose that it had entered into agreements waiving the connection fees in Mt. Carmel and Windward Cove when it filed its amended tariff as required by the Commission in the tap fee investigation in Sub 118. As to Lamplighter Village South, witness Fernald testified that on March 29, 2000, the Company sent a letter to Marshall Properties agreeing to waive tap fees, and that this agreement to waive tap fees was never filed with the Commission. Since the Company failed to file these agreements with the Commission for approval and deviated from its authorized tariff by charging fees consistent with those set out in these contracts, Public Staff witness Fernald made an adjustment to impute the authorized uniform connection fees of \$1,100 per connection in these systems.

In her rebuttal testimony, Company witness Weeks opposed the Public Staff's adjustment, stating that the Commission has ruled that the terms of the contract control the requirement to charge connection fees and that the fees should not be imputed because the Company followed its contract and did not resort to the uniform tariff. Witness Weeks further stated that it was unclear in 1993 whether the Company had to file an agreement such as the Carlson agreement in advance for approval, since this was not a new subdivision or area for which a certificate application or contiguous extension notification would be necessary. Witness Weeks also testified that the Public Staff's adjustment was unjustified simply because the Company failed to file a letter and that the Company should not be punished for its failure to do so. Witness Weeks also pointed out that in the Windward Cove and Lamplighter Village agreements, the developer contributed all the facilities to CWS, and therefore, the developer provided additional consideration. Finally, witness Weeks stated that the Commission's order in Sub 128 placed the burden on both CWS and the Public Staff to conform CWS's tariffs to the terms of arrangements and that the Public Staff has been aware of this letter for 11 years. Company witness Lubertoizzi testified that the Commission had issued requirements concerning the filing of contracts in Sub 111, but all of the procedures were under review in Sub 118.

First, the Commission does not agree that it was unclear whether contracts or agreements should have been filed in 1993. In the Sub 111 order, which was issued on October 12, 1992, the Commission ordered the following:

Also, all new contracts in the future should be filed within 30 days from signing. All contracts should be filed with the Chief Clerk of the Commission and a copy of each contract should be served on the Public Staff. If any agreements are reached with developers regarding the provision of utility service, but are not written or signed prior to being acted on, CWS shall file with the Commission a detailed written description of the agreement within 30 days of entering into the agreement.

The Commission agrees with the Public Staff on this issue and concludes that the Company should charge the uniform tap fee and plant modification fee in all of its service areas unless it receives prior approval to deviate from the uniform fees. This requirement should apply to both existing and new service areas. The filing by CWS of contracts that provide for non-uniform fees does not constitute Commission approval of such fees.

82 Report of the NCUC Orders and Decisions 387, 502 (1992)

At the time the Commission issued the Sub 111 order requiring the filing of all contracts or agreements, the Commission had already, on August 19, 1992, issued an order initiating the tap fee investigation in Sub 118, so clearly the investigation initiated in Sub 118 did not remove the requirement to file contracts. If anything, the Sub 118 proceeding should have made the Company even more aware of the importance of filing contracts and obtaining approval from the Commission to vary from the uniform fees. The Company did not except to the filing requirement set forth in the Sub 111 order and should have known that the requirement remained in force.

The requirement to file contracts in Sub 111 applies to all developer contracts, and even goes so far as to require that any verbal agreements be reduced to writing and filed. There were no exceptions made for contracts that related to existing service areas. In fact, the requirement that the Company obtain prior approval to vary from the uniform connection fees applied to both existing and new service areas, with a note that the filing of contracts that provided for non-uniform fees did not constitute Commission approval of such fees. Therefore, under the requirements set forth in Sub 111, the Carlson and Windward Cove agreements, which waived the uniform fees, should have been filed with the Commission to obtain prior approval for the non-uniform fees. The contracts themselves acknowledge this requirement, since they state that the fees are waived subject to the approval of the Commission. The Company clearly understands this, since Company witness Lubertozzi testified, "CWS is required to obtain permission for charging connection fees other than the uniform connection fee and list these deviations in its tariff. Otherwise, the uniform connection fee should apply. This was thoroughly discussed in Sub 118."

Since the Company failed to obtain prior approval to waive its uniform connection fees, the next issue is whether the uniform fees should be imputed. The Company's collection of connection fees, which vary from the amounts on its tariff, has been an issue in past rate cases, culminating with the Sub 118 tap fee investigation. In the Sub 118 case, the Public Staff proposed the imputation of connection fees because CWS charged connection fees based on the terms of its contracts as opposed to the approved fees listed on its tariff. The Commission disallowed the imputation of the unauthorized connection fees that were charged, because the Public Staff and the Attorney General had been aware of this practice in prior proceedings but had not proposed a ratemaking adjustment. The Commission determined that, because of the Public Staff's prior inaction, it had essentially waived its right to impute connection fees for ratemaking purposes with regard to any prior failure by CWS to seek and gain approval of contractually set connection fees. The Commission, however, went on to firmly state the following:

Notwithstanding the many harsh admonitions and reprimands the Commission has delivered over the years to CWS regarding its connection fee practices and procedures, there is no reasonable basis, legal or equitable, upon which to adopt the ratemaking adjustment through the imputation of connection fees proposed in this case by the Public Staff and Attorney General. The time has come to bring this longstanding saga to an end. All parties, including CWS, the Public Staff, the Attorney General, and the Commission, share responsibility for failing to pursue these connection fee issues to a timely and reasonable conclusion. That being the case, CWS will be required, once and for all, to conform its tariffs on a subdivision-by-subdivision basis to reflect the connection fees actually being charged by the Company and future deviations will not be tolerated, but no imputation of connection fees will be ordered in this case.

84 Report of the NCUC Orders and Decisions 632, 653 (1994).

The Sub 118 order also made it clear that contracts or agreements were to be filed with the Commission and that any fees that varied from the uniform fees had to be approved by the Commission. Specifically, the Sub 118 order stated:

That CWS shall file and request approval of all future contracts with developers within 30 days of signing said contracts, and in the case of informal agreements or contracts that are effective without signing, CWS shall file a written description of the terms of those agreements within 30 days of entering into such agreements. The requirements of this decretal paragraph shall apply to all future contracts, including those covering contiguous expansions. In all contracts that have provisions which allow for connection fees (tap-on fees) and/or plant impact fees that differ from the tariffed uniform connection charges and/or plant impact fees or that allow for special charges such as management fees, oversizing fees,

availability fees or other such fees not common to all service areas, the referenced charges or fees shall be specifically brought to the attention of the Commission to be approved or disapproved.

Id. at 684.

Unfortunately, the Sub 118 order did not bring this longstanding saga to an end, as intended by the Commission. The Company continued to collect connection fees that varied from its uniform fees without receiving Commission approval to do so. Unlike the instances covered in the Sub 118 case, this is the first time that these variances from the uniform fees have been brought before the Commission, since the Company failed to file the agreements as required in Sub 111. The Company did have an opportunity to resolve the connection fees covered by the Carlson and Windward Cove agreements, but failed to disclose the fact that the connection fees had been waived for these areas in the filing required in the Sub 118 case. The Company claims that the Commission's Sub 128 order also placed the burden on the Public Staff to conform CWS's tariffs to the terms of arrangements, and that a copy of the Windward Cove agreement had been sent to Mr. Andy Lee of the Public Staff. First, the Sub 128 order only required that CWS and the Public Staff review the Schedule of Rates issued in that case and notify the Commission of any inconsistencies or errors by June 24, 1994. This order did not place on the Public Staff, instead of the Company, the burden of filing contracts with the Commission and obtaining Commission approval in order to vary from the uniform fees.

The Company appears to also assert that, instead of collecting a connection fee, as set forth in its tariff sheet, it can comply with its tariff by accepting plant in lieu of the connection fee. The Commission does not accept this argument. Connection fees, by definition, are to be paid in cash, and this is indicated on the tariff sheet when the amount of the fee is shown in dollars. The Commission has clearly stated in the Sub 118 order that any fees differing from the tariffed uniform connection fees were to be brought to the attention of the Commission to be approved or disapproved. Therefore, if the Company wished to not collect its uniform connection fee in an area in cash, for whatever reason, it should have applied to the Commission for approval to do so.

The Company was clearly warned in the Sub 118 case that no future deviations from its tariffed fees would be tolerated. It is the responsibility of the Company to comply with Commission orders and tariffs. Since the Company failed to do so, even after being warned that no future deviations would be tolerated, the Commission concludes that the authorized uniform connection fees of \$1,100 per tap should be imputed in Mt. Carmel (Carlson agreement), Windward Cove, and Lamplighter Village South.

Furthermore, the Commission again reiterates that no future deviations from the Company's tariffed fees will be tolerated. Connection charges and plant modification fees are rates, and as such, require Commission approval. The Company should

charge the authorized uniform connection charge and plant modification fee in all of its service areas, whether existing or new, unless it receives prior Commission approval to deviate from the uniform fees.

In the arrangement with Huber Construction regarding another project at the Mt. Carmel system, the Public Staff made an adjustment to impute \$45 per tap. Public Staff witness Fernald testified that in a letter discussing the project, dated July 12, 1996, the Company states that it will collect a sewer connection fee of \$1,805, of which it will remit \$750 to MSD, resulting in a connection fee for CWS of \$1,055, which is \$45 less than the authorized uniform fee of \$1,100. Public Staff witness Fernald further testified that the Company never filed an agreement for this project with the Commission, either as part of a contiguous extension filing or in response to the filing requirement established in Sub 118, nor did the Company request approval to vary from its uniform tap fee.

Company witness Weeks testified that in the Mt. Carmel system, CWS collects the wastewater through its collection facilities in Mt. Carmel and transports it to MSD for treatment and disposal. Witness Weeks further testified that the Company's collection of connection fees after remitting \$750 to MSD compensates CWS in the form of CIAC, and that CWS's remittance to MSD serves as a substitute for CWS's need to own wastewater treatment and disposal facilities. Witness Weeks stated that in actuality CWS collected \$1,805, more than the uniform fee, and that witness Fernald simply misstates the substance of the transaction in order to increase CIAC and reduce rate base.

On this issue, the parties disagree as to the substance of the transaction. It is the Public Staff's position that the Company is collecting connection fees on behalf of MSD, and therefore, the \$1,805 fee collected consists of a \$750 connection fee for MSD, and a \$1,055 connection fee for CWS, which is \$45 less than the uniform fee. The Company appears to take the position that CWS is paying the connection fee to MSD as part of its costs to provide service, and it is collecting a tap fee of \$1,805, which is \$705 more than its authorized connection fee.

As previously discussed, the Company is required to obtain permission before charging connection fees other than the uniform connection fee. In this instance, the Company clearly varied from its authorized connection fees without obtaining Commission approval to do so. Under the Public Staff's position, the Company undercollected \$45 per tap, and the issue is whether this difference should be imputed. Under the Company's position, the Company overcollected \$705 per tap, and the issue is whether the overcollection should be refunded. So first, the Commission must determine the substance of the transactions involved.

The July 12, 1996, letter to Mr. Huber, which was identified as CWS Fernald Cross Exhibit No. 14, states that CWS will be responsible for sending the payment of \$750 per connection to MSD. There is also a handwritten note on the letter indicating that \$750 of the \$1,805 was sent to MSD for connection fees, leaving \$1,055 for CWS.

Based on this letter, the Commission agrees with the Public Staff that CWS was collecting a connection fee on behalf of MSD and that the connection fee collected for CWS in this instance was \$1,055, resulting in an undercollection of \$45 per tap. In this case, the Company should have collected its uniform tap fee, since it failed to receive prior Commission approval to do otherwise. Therefore, the Commission concludes that the undercollection of \$45 per tap should be imputed.

#### Refund Gross-Up

On August 20, 1996, the Small Business Job Protection Act of 1996 was signed into law. Section 1613 of this act restored the CIAC provisions that were repealed by the Tax Reform Act of 1986 for water and sewer utilities, effective for amounts received after June 12, 1996. On August 27, 1996, the Commission issued an order in Docket No. M-100, Sub 113, in which it ordered:

1. That all water and sewer companies cease collecting gross-up on collections of CIAC received after June 12, 1996.
2. That all water and sewer companies which have collected gross-up on CIAC received after June 12, 1996, refund any amounts collected to the contributors with 10% interest per annum within 30 days of the date of this order.
3. That all water and sewer companies who have collected gross-up on CIAC received after June 12, 1996, file a notarized report on the refunds made within 60 days of the date of this order. The notarized report should list the amount of gross-up collected on CIAC received after June 12, 1996, the interest on the refund and how it was calculated, and the total amount, including interest, which was refunded.

#### 86 Report of NCUC Orders and Decisions, 1 (1996)

Public Staff witness Fernald testified that the Company failed to file the notarized report on refunds as required. Witness Fernald also testified that the Company failed to cease collecting gross-up as of June 12, 1996, in the Cambridge, Windsor Chase, Southwoods, Lamplighter Village South, Winghurst, and Matthews Commons systems. Witness Fernald recommended that the Company immediately cease collecting gross-up on CIAC and that the Company refund all gross-up collected on CIAC since June 12, 1996, to the current property owners, with 10% interest compounded annually. Witness Fernald also recommended that the gross-up collected in systems that have since been sold to an entity exempt from regulation by the Commission be treated as cost-free capital in this case.

Company witness Weeks testified that the Company determined that no report was due since it had stopped collecting gross-up on June 12, 1996. Witness Weeks

also opposed making refunds as recommended by the Public Staff. Witness Weeks testified that the contracts for Cambridge, Southwoods, and Matthews Commons did not break down the connection fees into components, so that no portion of the fees were expressly earmarked as reimbursement for income taxes. Witness Weeks further stated that the developer was willing to enter into the transaction on the basis of the financial terms agreed to and never expected to obtain a refund if the tax laws changed in the future. Furthermore, witness Weeks testified that whoever bought the houses paid what they felt to be a fair price in light of market conditions. For the Windsor Chase and Winghurst systems, witness Weeks testified that the Company did collect grossed-up fees after June 12, 1996, but should be allowed to retain the gross-up as cost-free capital and a reduction to rate base. As to the Lamplighter Village South system, witness Weeks testified that, by the time the contract was executed, the Small Business Job Protection Act of 1996 had repealed the provision making CIAC taxable as ordinary income, and the contract makes no mention of gross-up. Witness Weeks also points out that the Commission approved this contract on May 19, 1998, and no mention was made at the time of the requirement that the contributor would pay any unauthorized gross-up. Finally, witness Weeks states that the Public Staff's recommendation that the refund be made to the current property owner contradicts the Commission's order in Docket No. M-100, Sub 113, which states that the refund is to go to the contributor.

The first area of disagreement between the parties concerns whether the Company failed to file the notarized report required by the August 27, 1996 order. As shown on the tap fee listing for 1996 filed with the Company's Form W-1, which was introduced as Public Staff Weeks' Cross-Examination Exhibit No. 1, the Company did refund gross-up collected after June 12, 1996, in most of its systems. Witness Weeks admitted to this during cross-examination. Therefore, since the Company refunded gross-up, it should have filed the notarized report on the refunds, as required by the Commission.

The next area of disagreement concerns whether the Company continued to collect gross-up after June 12, 1996, and if so, should the Company be required to refund the gross-up collected. The Commission has previously dealt with the issue of refunds of gross-up collected after June 12, 1996 in the Covington Cross case, Docket No. W-354, Sub 171. In its Order Denying Motion for Reconsideration issued on February 27, 2002, in that case, the Commission stated:

In its Motion for Reconsideration, CWS seeks to remove the Commission from oversight of the connection fee transaction between contributor/customer and CWS. The connection fee is a tariff and it is regulated and established by the Commission. When the Tax Reform Act of 1986 (TRA-86) made utilities liable for paying taxes on CIAC, the Commission required (in an Order issued on August 26, 1987, in Docket No. M-100, Sub 113) the utilities to modify their tariffs to collect gross-up for taxes on CIAC from the contributor of the CIAC (whether it was a

developer or a customer). The purpose of this requirement was to ensure that the contributor of the CIAC paid the taxes on the contribution and not the general customer base of the regulated utility. When the Small Business Job Protection Act (SBJPA) of 1996 restored the tax treatment of CIAC to its pre-TRA-86 status, the Commission issued an order (in Docket No. M-100, Sub 113, on August 27, 1996) requiring utilities to cease collecting gross-up for taxes on CIAC.

In its contract with the developer in this matter, the contractually agreed upon connection fee does not separate the connection fee amount into distinct amounts for a connection fee and gross-up for taxes on CIAC. However, the \$1,795 connection fee is equal to the product of CWS's uniform connection fee of \$1,100 multiplied by the Commission required gross-up multiplier. This contract was entered into during the period of time that CIAC was subject to taxation and it properly included provision for collecting gross up for taxes on CIAC. However, the notification of contiguous extension filed in this matter was filed after the Commission's Order to cease collecting gross up. Therefore, the inclusion of gross up for taxes on CIAC in this contract is in contravention of the Commission's Order. The Commission clearly can and must require CWS to cease collecting gross-up for taxes on CIAC and require the refund of any CIAC gross-up collected after the date of the SBJPA.

#### Order Denying Motion for Reconsideration, p. 5

As in the Covington Cross case, at the time the contracts for Cambridge, Southwoods, Matthews Commons, and Lamplighter Village South were entered into, CIAC was still subject to taxation and water and sewer utilities were required to collect gross-up. The fact that a contract does not specifically list the amount of gross-up does not mean that the Company did not comply with the gross-up requirement. For example, in its report on connection fees filed in Sub 118, the Company stated that the connection fees in the Cambridge contract included gross-up. The Commission's order issued on August 27, 1996 clearly states that water and sewer utilities are to cease collecting gross-up on CIAC, and the Company did not file exceptions or request clarification of this order. The Commission finds that the Company had no authority to continue collecting gross-up after June 12, 1996, and that the gross-up collected for systems still owned by the Company should be refunded. The Commission further concludes that the refunds should be made to the current property owners, consistent with the refunds required in North Topsail in Docket No. W-1000, Sub 5, and Covington Cross, Docket No. W-354, Sub 171. In the order issued on December 21, 2000, in Docket No. W-1000, Sub 5, which dealt with the issue of whether Utilities, Inc. should make refunds of overcollected gross-up on CIAC to contributors of the CIAC or to current property owners, Hearing Commissioner Ervin concluded that, "as between a developer and the initial purchaser, the developer is likely to have intended to sell the property to a purchaser, essentially acted as the agent of the purchaser in paying the

tap fee, and undoubtedly intended to recoup the gross-up and tap fee in the price charged for the property. Similarly, as between homeowners, the tap fee represents payment for an integral part of the property, the cost of which has been undoubtedly passed on to each subsequent purchaser." The Commission concludes that the reasoning employed in its previous orders is applicable to the case at hand and should be utilized. CWS should make refunds of the gross-up that it overcollected to the current property owner whose name or names are listed on the deed to the property.

The Company also opposed refunding the gross-up at 10% interest compounded annually. Company witness Weeks testified that a lower interest rate would be appropriate, since it is unlikely that the contributor of the tap fee could have earned 10% on their investment. Witness Weeks further testified that since the Company is currently issuing customer deposit refunds at 8%, it would be proper to use this rate as the maximum rate for refunds of gross-up as well.

The Commission concludes that the appropriate interest rate on the refunds is 10%, compounded annually, consistent with the refund of gross-up in other cases. As discussed by the Commission in Docket No. E-7, Sub 501, since 1981, when G.S. 62-130(e) was enacted, the Commission has consistently used 10% to calculate interest on utility refunds. Since that time, interest rates have moved up and down. The Commission has used 10% notwithstanding the level of interest rates in the economy on the theory that 10% provides for adequate compensation over the long term considering the fact that a policy of tracking the general level of interest rates would lead to the denial of fair compensation in times when the interest rates exceed the statutory cap of 10%. In addition, the use of a 10% interest rate is also appropriate because the recipient of the return might have been able to avoid incurring higher cost debt, such as credit card debt, which typically involves an interest rate of more than 10%. Accordingly, the Commission is of the opinion that 10% continues to be a just and reasonable rate.

Based on the foregoing, the Commission concludes that the Company should (1) immediately cease collecting gross-up as required by the Commission's order issued on August 27, 1996, in Docket No. M-100, Sub 113, and (2) file, within 60 days of the effective date of this Order, a plan to refund the gross-up collected in the Cambridge, Windsor Chase water system, Southwoods sewer system, Lamplighter Village South, and Wingham systems to the current property owners with 10% interest compounded annually.

The last issue is what should be done about the gross-up collected in the Windsor Chase sewer system, Southwoods water system, and Matthews Commons water and sewer systems, which have since been sold by the Company. Public Staff witness Fernald testified that, since it would be harder for the Company to make refunds in systems that they no longer own, she is recommending that the gross-up be treated as cost-free capital instead of requiring a refund. Witness Fernald further testified that the shareholders should not receive a windfall due to collecting gross-up when it had no

authority to do so. Witness Fernald also stated on cross-examination that the gross-up collected was not CIAC, and should not be treated as such in the sale of the systems.

Company witness Weeks testified that regardless of what was collected for Windsor Chase and Matthew Commons, rate base should be zero, since the systems were sold. Witness Weeks also testified that the Public Staff's recommendation was inconsistent with the matching principle.

Gross-up was established to pay taxes related to CIAC, so that the net effect of the transaction to the utility should be zero. The collection of gross-up should not have any effect on the net investment in a system by a utility. Furthermore, the Company had no authority to collect gross-up after June 12, 1996. It is inappropriate to allow the Company's shareholders to retain these monies, when they were collected without authority, and are not part of the utility's net investment in the systems sold. The issue is whether these funds should be refunded or treated as cost-free capital. The Commission agrees with the Public Staff that, due to the difficulty in making the refunds since the Company no longer has customer records for these systems, the gross-up collected in these systems should be treated as cost-free capital in this and all future proceedings.

#### Refund Bradford Park Overcollection

Public Staff witness Fernald testified that the Company overcollected tap fees in the Stonehedge / Bradford Park systems and recommended that the overcollection be refunded to the current property owners with 10% interest compounded annually. The January 27, 1988 contract for the Stonehedge / Bradford Park systems stated that the combined water and sewer connection fee would be \$2,300 per single family equivalent. Witness Fernald testified that at the time the contract was signed, water and sewer utilities were required to collect gross-up on CIAC, and in its report filed on November 30, 1992, in Sub 111, the Company indicated that the connection fees for Bradford Park were \$441 for water operations and \$971 for sewer operations, with the remaining balance of the \$2,300 being gross-up. Witness Fernald further noted that these connection fees of \$441 and \$971 are the amounts currently authorized for Bradford Park on the Company's tariff sheet.

Company witness Weeks opposed the Public Staff's recommendation, since the Company collected its contracted amount for this system. Witness Weeks testified that the Company ceased paying income taxes after 1996 and took the position that the way the contracts were written permitted CWS to retain and continue to collect the fees called for in the agreements. Witness Weeks also testified that the fact that the Public Staff and CWS disagreed does not mean that CWS disregarded the Commission's order to cease collecting gross-up. Finally, witness Weeks stated that any overcollection of tap fees benefits ratepayers by increasing CIAC and reducing rate base, thereby keeping rates low.

This is another instance where the Company continued to collect gross-up after June 12, 1996. The contract for this system was signed during the period that gross-up was required, and the amount of connection fees listed in the contract included gross-up, as stated by the Company in its November 30, 1992 report filed in Sub 111. Therefore, the Commission finds that the Company had no authority to continue collecting gross-up in Bradford Park after June 12, 1996, and that the gross-up collected should be refunded to the current property owners with 10% interest compounded annually. The Commission further concludes that (1) the Company should immediately begin charging its authorized connection fees in Bradford Park and (2) the Company should file, within 60 days of the effective date of this Order, a plan to refund the gross-up collected in Bradford Park to the current property owners, with 10% interest compounded annually.

#### Reservation of Capacity Fees

Public Staff witness Fernald has included reservation of capacity fees that the Company collected in Rutledge Landing, Stewart's Crossing, Avensong, Brawley Farms, Canford Commons, and other areas in CIAC. Witness Fernald testified that these fees were received from developers for plant costs and capacity and therefore, should be recorded as CIAC. Witness Fernald also noted that in the orders recognizing the contiguous extensions for Rutledge Landing, Stewart's Crossing, Brawley Farms, and Canford Commons, the Commission ordered that the reservation of capacity fees be recorded as CIAC on the Company's books. Witness Fernald testified that the Company did not record the reservation of capacity fees as CIAC as ordered by the Commission, but instead recorded 1/2 of the fee for Rutledge Landing on CWS Systems' books and recorded the fees for Stewart's Crossing and Brawley Farms as deferred credits on Utilities, Inc.'s books. Witness Fernald also testified that the reservation of capacity fee for Avensong had been recorded as miscellaneous income on Utilities, Inc.'s books. Finally, witness Fernald stated that the reservation of capacity fees should be included in CIAC in order to recognize the fact that the Company has the use of this money.

Company witness Weeks testified that, while the reservation of capacity fees should be treated as CIAC, there is an issue of matching and timing. Witness Weeks testified that if the reservation of capacity fees have not yet been used to fund the construction of backbone plant, it is appropriate to book the funds as a deferred credit and delay recognition of the funds as CIAC on the Company's books until the funds are used to purchase plant in service. Witness Weeks further testified that the reservation of capacity fees for Stewart's Crossing, Avensong, and Canford Commons should be included in CIAC since the systems are at build out and all customers have tapped on. On cross-examination, witness Weeks testified that the reservation of capacity fees should begin amortization in the year that the funds were used to purchase plant. Witness Weeks further testified that she began her amortization in the year the fees were collected, and stated that she did not know the year the funds were used.

The parties disagree on when reservation of capacity fees should be included in CIAC for ratemaking purposes. It is the Public Staff's position that these fees should be included in CIAC upon receipt, while the Company believes that the fees should not be included in CIAC until they are used to fund plant improvements. For Rutledge Landing, Brawley Farms, and other areas, the Company takes the position that the reservation of capacity fees should not be included as a reduction to rate base in this case, since the monies have not yet been used to purchase plant. These reservation of capacity fees have been collected from the developer and the utility has the use of this money until the money is used to fund plant additions. When the Company constructs the required plant expansions, such as expanding a wastewater treatment plant, the Company will accrue interest during construction of the plant to recognize the cost of the funds spent by the Company up to the time the project is completed and placed in service. At that time, the plant costs, including AFUDC, will be booked as an addition to plant in service. Just as the cost of money used during construction is recognized by including AFUDC in rate base, the fact that the Company has the use of the reservation of capacity fees should also be recognized, either as part of or in a calculation similar to AFUDC or by including the fees in CIAC upon receipt from the developer. Under the first option, the calculation of the interest on the fees would begin as soon as the reservation of capacity fees are received, and could continue for years, until the plant additions are constructed and placed in service. Due to this, recognizing the receipt of the reservation of capacity fees through this method is not a practical option. Instead, the Commission concludes that the reservation of capacity fees should be included in CIAC in this case, to recognize the fact that the Company has the use of the fees.

As for the Stewart's Crossing, Avensong and Canford Commons reservation of capacity fees, both parties agree that these fees should be included in CIAC in this case, and the only issue is when the fees should begin amortization. While it is the Company's position that the fees should begin amortization in the year the funds are spent on plant and included in CIAC, this is not how the Company actually calculated the amortization on its schedules. The Company did not know the year the funds were used to purchase plant, and began the amortization in the year the funds were received, which is inconsistent with the Company's own position, and results in the ratepayers never receiving the full benefit of the fees. The fact that the Company was unable to properly calculate the amortization illustrates the difficulty in keeping track of these fees and determining when specific fees are used to purchase plant. Since the Commission has found that reservation of capacity fees should be included in CIAC upon receipt, the amortization of the fees should begin in the year the fees are received.

Based on the foregoing, the Commission concludes that the appropriate level of reservation of capacity fees, net of amortization, to include in CIAC is \$285,230, consisting of \$136,764 for water operations and \$148,466 for sewer operations.

## Management Fees

The Public Staff made an adjustment to include in CIAC management fees that should have been collected since the last rate case, including management fees for 419 taps in the Cambridge subdivision and management fees for the Covington Cross system. The Public Staff also recommended that management fees that the Company overcollected in the Turtle Rock and Strathmoor systems be refunded to the current property owners with 10% interest compounded annually.

In her rebuttal testimony, Company witness Weeks agreed with the Public Staff's recommendation to refund the overcollections in Turtle Rock and Strathmoor, but proposed that the refund be made at an 8% interest rate. Witness Weeks opposed the Public Staff's adjustment to include the Cambridge management fees in CIAC. Although witness Weeks acknowledged that the Company did not collect management fees in Cambridge when they were authorized to do so, she stated that the Company's failure to do so was inadvertent. Witness Weeks further stated that, "of the many connection and management fees the Company collects each month, from time to time it will make mistakes." In the alternative, witness Weeks stated that if the Commission imputed the management fees, then the Company should be allowed to assess the current property owners for the fees. Finally, witness Weeks testified that the Covington Cross management fee of \$100 per connection should be split between water and sewer operations, and since the water system is under CWS Systems, only one-half of the \$100 fee should be included in CIAC in this case.

The first difference between the parties regarding management fees concerns the appropriate interest rate to be used in the calculation of refunds for the Turtle Rock and Strathmoor systems. As previously discussed under the refund of gross-up section, the Commission has found that 10% continues to be a fair and reasonable rate for utility refunds. Therefore, the Commission concludes that the Company should be required to refund the overcollection of management fees in the Turtle Rock and Strathmoor systems to the current property owners, with 10% interest compounded annually, and that the Company should file a refund plan within 60 days of the effective date of this order.

The next difference concerning management fees pertains to the fees for the Cambridge system. As previously discussed, it is the responsibility of management of the utility company to collect its authorized rates, including management fees. The Commission concludes that the Public Staff's adjustment to include the management fees that should have been collected in Cambridge in CIAC is appropriate. The Commission further concludes that the ratepayers should not be required to pay rates to allow a return on plant investment that should have been recovered through authorized management fee collections.

As to whether the Company should be allowed to assess the current property owners for these fees, as previously discussed, there is no statutory authority for assessing the customers for undercollections that were the result of the actions of the Company. Furthermore, the fees in question were for the years 1993 through 1999; the Company did not request an assessment until 2004, some five years later; and the Company should be estopped from now seeking and recovering an assessment. The Commission therefore concludes that the Company is not entitled to assess the current property owners in the Cambridge subdivision for management fees that it failed to charge.

Finally, the parties disagree on the level of fees to be included in CIAC for the Covington Cross system. The Public Staff calculated the management fees for the Covington Cross system based on a fee of \$100 per lot, while the Company used both \$50 and \$100 per lot. In her rebuttal testimony, Company witness Weeks testified that the \$100 management fee should be split between water and sewer operations, and since the water system is under CWS Systems, only one-half of the \$100 fee should be included in CIAC in this case.

The management fee for the Covington Cross sewer system is set forth in the contract with the developer, which was filed in Docket No. W-354, Sub 171. This contract is just for the sewer system, and clearly states that the management fee is \$100. On cross-examination, witness Weeks agreed that the \$100 management fee should not be split between water and sewer operations. Therefore, the Commission concludes that the management fee for Covington Cross is \$100 for sewer operations. Based on the \$100 management fee, the management fees, net of amortization, to be included in CIAC for Covington Cross are \$8,857, as recommended by the Public Staff.

#### Summary

Based on the foregoing, the Commission concludes that the appropriate amount of CIAC, net of amortization, is \$18,536,122 for water operations and \$15,416,949 for sewer operations.

#### ACCUMULATED DEFERRED INCOME TAXES

The parties disagree on the amount of ADIT to deduct from rate base in this proceeding. The Public Staff recommends an amount of \$3,396,528 for water operations, which is \$654,233 greater than the Company's proposed amount of \$2,742,295. The Public Staff also recommends an amount of \$2,033,281 for sewer operations, which is \$380,873 more than the Company's proposed amount of \$1,652,408. The differences in the level of ADIT recommended by the parties consist of the following items:

<u>Item</u>	<u>Water</u>	<u>Sewer</u>
ADIT - plant modification fees	\$ 524,691	\$ 302,814
ADIT - rate case expense	4,751	2,864
ADIT - deferred maintenance	(2,291)	(1,380)
ADIT - depreciation	<u>127,082</u>	<u>76,575</u>
Total	<u>\$ 654,233</u>	<u>\$ 380,873</u>

#### ADIT - Plant Modification Fees

Witness Fernald has removed from federal ADIT \$670,712 and from state ADIT \$156,793 associated with plant modification fees received by the Company in 2001, 2002, and 2003. CWS has included all cash payments received as tap fees as taxable income for tax purposes and has included a debit balance in ADIT associated with the receipt of plant modification fees. Witness Fernald testified that CWS collects plant modification fees for the expansion of and improvements for the utility system. Witness Fernald testified that the Public Staff had requested CWS's external auditors' opinion on the taxability of plant modification fees but has not received a response. Witness Fernald removed an amount of ADIT related to plant modification fees based on information available as of the date of her testimony because the Company had not provided the basis for taxing plant modification fees under the tax law changes.

CWS takes the position that plant modification fees are taxable income under the Job Protection Act of 1996. CWS has treated plant modification fees as taxable income and has actually paid tax on them. CWS has followed this procedure based on consultation with its tax experts, PriceWaterhouseCoopers.

On cross-examination, CWS asked witness Fernald to identify the authority she relied upon in support of her position that the post-2000 plant modification fees were not taxable. She identified the IRS final regulation issued on January 11, 2001. Witness Fernald cited portions of the regulation exempting Contributions in Aid of Construction from taxable income generally but listing as an exception customer connection fees.

In particular, witness Fernald cited Section (b)(1) on page 2255:

(b) Contribution in aid of construction – (1) In general. For purposes of Section 118(e) and this section, the term contribution in aid of construction means any amount of money or other property contributed to a regulated public utility that provides water or sewage disposal service to the extent that the purpose of the contribution is to provide for the expansion, improvement, or replacement of the utility's water or sewage disposal facilities.

Witness Fernald also cited Section (b)(3)(i) on page 2255. This portion of the regulation exempts from the definition of nontaxable CIAC customer connection fees:

(3) Customer connection fee – (i) In general. Except as provided in paragraph (b)(3)(ii) of this section, a customer connection fee is not a

contribution in aid of construction under this paragraph (b) and generally is includible in income. The term customer connection fee includes any amount of money or other property transferred to the utility representing the cost of installing a connection or service line (including the cost of meters and piping) from the utility's main water or sewer lines to the line owned by the customer or potential customer. A customer connection fee also includes any amount paid as a service charge for starting or stopping service.

In support of its position that plant modification fees are taxable, CWS relies on other paragraphs of the same regulation. CWS relied upon paragraph (b)(4)(i):

(4) Reimbursement for a facility previously placed in service – (i) In general. If a water or sewage disposal facility is placed in service by the utility before an amount is contributed to the utility, the contribution is not a contribution in aid of construction under this paragraph (b) with respect to the cost of the facility unless, no later than 5½ months after the close of the taxable year in which the facility was placed in service, there is agreement, binding under local law, that the utility is to receive the amount as reimbursement for the cost of acquiring or constructing the facility.

CWS also cites Section (b)(5):

(5) Classification of ratemaking authority. The fact that the applicable ratemaking authority classifies any money or other property received by a utility as a contribution is not conclusive as to its treatment under this paragraph (b).

In addition, CWS filed as a late filed exhibit a memorandum from PriceWaterhouseCoopers in which the firm stated that it agreed with CWS's tax treatment of plant modification fees. The Public Staff lodged no objection to Commission consideration of this late-filed exhibit. Specifically, Mr. Jerry Cahill stated that, for the 2001 through 2003 tax returns, "plant modification fees and tax/connection fees were properly included in taxable income on each tax return under the provisions of Internal Revenue Code Section 118 and Income Tax regulations thereunder." Finally, Public Staff witness Lucas testified on cross-examination that CWS serves in a number of subdivisions where the backbone facilities are in place before the residences in the subdivision are completely built out. Thereafter, infill occurs, and both tap fees and plant modification fees are assessed when new residences make connection to the water and sewer system. This testimony supports CWS's position that paragraph (b)(4)(i) is controlling. As a result the Commission concludes that CWS appropriately treated the plant modification fees as taxable income.

Based on the foregoing, the Commission concludes that CWS has appropriately accounted for such plant modification fees and that the appropriate amount of ADIT related to plant modification fees is \$554,465 for water operations and \$422,257 for sewer operations.

### ADIT - Rate Case Expense

The Public Staff and the Company are recommending different amounts of ADIT related to rate case expense due to the differing levels of unamortized rate case expense. Based on its conclusions reached elsewhere in this Order regarding the appropriate level of unamortized rate case expense, the Commission concludes that the amount of ADIT related to rate case expense to deduct from rate base is \$34,270 for water operations and \$20,651 for sewer operations.

### ADIT - Deferred Maintenance

The difference in the level of ADIT related to deferred maintenance is due to the different levels of deferred maintenance included by the parties in rate base. Based on the level of deferred maintenance costs to be included in rate base determined elsewhere in this Order, the Commission concludes that the amount of ADIT related to deferred maintenance to be deducted from rate base is \$136,231 for water operations and \$82,088 for sewer operations.

### ADIT - Depreciation

The only difference between the parties in the calculation of ADIT - depreciation relates to the amount of pro forma plant additions to be included in the calculation. The Public Staff included the total amount of pro forma plant additions of \$4,654,673 in its calculation, while the Company reduced the pro forma plant additions by the retirements of \$1,057,221 before calculating depreciation.

The purpose of the calculation is to update ADIT to recognize the additional plant included in the rate case. The Company will be able to claim on its tax returns depreciation, including the 50% bonus depreciation, for the total amount of plant additions made, not just the amount net of retirements. Therefore, it is appropriate to calculate the adjustment to ADIT - depreciation based on the total pro forma plant additions.

### Summary

Based on the foregoing, the Commission concludes that the appropriate amount of ADIT to deduct from rate base in this proceeding is \$2,920,893 for water operations and \$1,671,871 for sewer operations.

### **DEFERRED CHARGES**

The Company and the Public Staff have recommended different levels of deferred charges as a result of maintenance expenses and rate case expense. As to the difference in deferred charges related to maintenance expenses, in her rebuttal testimony Company witness Weeks testified that Public Staff witness Henry omitted

deferred charges of \$13,294 from rate base. On cross-examination, witness Weeks stated that the \$13,294 related to VOC testing. Public Staff witness Henry testified that he did not include VOC testing in deferred charges in rate base since the Commission has previously ruled that VOC tests are regular tests and should not be included in deferred charges.

In its final schedules filed on January 7, 2005, the Company increased the deferred charges for maintenance items from \$403,546 to \$575,791. In the final schedules filed by the Public Staff on January 12, 2005, the Public Staff increased its recommended level of deferred charges to \$566,269, which is \$9,522 less than the Company's final amount.

There is no testimony or evidence in the record explaining the difference between the parties' recommended levels of deferred charges for maintenance items. At the hearing, the difference between the parties' positions was due to VOC testing. The Commission has previously addressed the issue of deferred charges related to VOC testing in prior rate cases. In the last rate case, Docket No. W-354, Sub 128, the Commission found that an unamortized balance of VOC testing should not be included in deferred charges, since the Commission had not authorized specific cost recovery of VOC testing expenses but instead had included a normalized level of ongoing costs expenses.

Based on the note on Late Filed Exhibit KEW 3 indicating that the Company's amounts exclude VOC testing, it appears that the difference between the parties is no longer due to VOC testing. However, the Company has not provided any testimony or evidence that there are additional costs for which the Commission has authorized specific cost recovery, instead of including a normalized level in expenses. Since the Company has not provided any testimony or evidence supporting any additional deferred charges, the Commission concludes that the amount of unamortized deferred charges related to maintenance items recommended by the Public Staff is appropriate for use in this proceeding.

Elsewhere in this Order, the Commission has addressed the appropriate level of rate case expense to include in this proceeding and the amortization period for those rate case costs. Based on those conclusions, 2/3 of the rate case costs for this proceeding should be included in deferred charges.

Based on the foregoing, the Commission concludes that the appropriate level of deferred charges to include in rate base is \$708,721, consisting of \$482,129 for water operations and \$226,592 for sewer operations.

#### COST-FREE CAPITAL

As previously discussed under CIAC, due to the difficulty in making the refunds since the Company no longer has customer records for the systems that have been

sold, the gross-up collected in these systems should be treated as cost-free capital in this case.

### SUMMARY CONCLUSION

Based on the foregoing, the Commission finds and concludes that the appropriate level of rate base for use in this proceeding is \$30,372,584, of which \$19,542,600 is applicable to water operations and \$10,829,984 is applicable to sewer operations.

### EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 52 - 60

The evidence supporting these findings is contained in the testimony of Public Staff witnesses Henry, Lucas and Fernald and Company witnesses Lubertozi, Weeks and Daniel. The following tables summarize the amounts which the Company and the Public Staff contend are the proper levels of revenues to be used in this proceeding:

#### WATER OPERATIONS

<u>Item</u>	<u>Company</u>	<u>Public Staff</u>	<u>Difference</u>
Service revenues	\$ 6,747,099	\$ 6,896,512	\$ 149,413
Miscellaneous revenues	133,966	208,366	74,400
Uncollectible accounts	<u>(35,753)</u>	<u>(36,552)</u>	<u>(799)</u>
Total operating revenues	<u>\$ 6,845,312</u>	<u>\$ 7,068,326</u>	<u>\$ 223,014</u>

#### SEWER OPERATIONS

<u>Item</u>	<u>Company</u>	<u>Public Staff</u>	<u>Difference</u>
Service revenues	\$ 5,340,312	\$ 5,356,689	\$ 16,377
Miscellaneous revenues	63,187	63,187	0
Uncollectible accounts	<u>(27,770)</u>	<u>(27,855)</u>	<u>(85)</u>
Total operating revenues	<u>\$ 5,375,729</u>	<u>\$ 5,392,021</u>	<u>\$ 16,292</u>

As shown in the preceding tables, the Public Staff and the Company agree on the level of miscellaneous sewer revenues. Therefore, the Commission finds and concludes that the level agreed to by the parties for this item is appropriate for use in this proceeding.

## SERVICE REVENUES

The parties disagree on the best way to determine water and sewer consumption. There is no dispute that the test year saw an unusually high rainfall. Public Staff witness Hinton testified that his statistical analysis showed that the 63.03 inches of rainfall, and the 139 days of rain observed during the 2003 test year in CWS's service area was abnormally high. He maintained that this unusually high rainfall contributed to a significantly lower number of gallons sold during the test year.

The parties generally agreed that an adjustment to the 2003 consumption amount was in order. Calculation of the appropriate adjustment was complicated by the fact that the Company was only able to provide consumption records for the years 1992, 1996, 2001, 2002, and 2003. The Company recommended averaging the water consumption per REU for all five available years. However, the Public Staff recommended averaging the water consumption per REU only for the years 2001, 2002, and 2003, because, as acknowledged by Company witness Daniel, some of the Company's newer systems have appreciably higher water demand per connection as a result of such features as in-ground irrigation systems and because total water consumption increased every year from 1999 through 2002 before decreasing in 2003, as shown by the Company's Annual Reports.

On cross-examination, Public Staff witness Hinton acknowledged that the level of rainfall recorded in the Company's service area has ranged from a 30-year low in 2001 to a 30-year high in 2003. However, witness Hinton noted that the rainfall data averaged over the past three years, 45.49 inches, was close to the rainfall data averaged over the past thirty years, 44.67 inches, and that the three-year average of 112 days of rain is close to the 30-year average of 114 days. The rainfall data is presented in witness Hinton's Appendix A, page 9 of 12.

On the basis of the unusually heavy rainfall during the test year, the Commission is convinced that the test period level of water consumption should be adjusted. Because of the apparent increase in per customer usage over time, the consumption amounts for the years 1992 and 1996 are no longer representative and should not be used.

Based on the foregoing, the Commission concludes that the best method to determine water consumption is by averaging the water consumption per REU for 2001, 2002, and 2003, resulting in an average consumption of 5,300 gallons per month per REU, which is an 8.1% increase over the average consumption during 2003. Similarly, the best method to determine sewer consumption is by averaging the sewer consumption per metered REU for 2001, 2002, and 2003, resulting in an average consumption for sewer operations of 8,233 per month per metered sewer REU. Based on these average consumption amounts, the service revenues under existing rates are \$6,896,512 for water operations and \$5,356,689 for sewer operations.

## MISCELLANEOUS WATER REVENUES

The parties disagree on the appropriate treatment of \$74,400 of revenues from antenna space rentals. Public Staff witness Fernald testified that the Company recorded these revenues on Utilities, Inc.'s books, while recording the legal expenses associated with the leases on CWS's books. Witness Fernald further testified that, since the revenues are from the rental of elevated storage tanks, whose costs are being recovered from ratepayers, it is appropriate to flow the benefit of the lease payments to ratepayers, similar to the treatment of pole attachment revenue for electric companies.

Company witness Lubertozi testified that the antenna lease revenues and legal fees should be recorded in nonutility income (Account 421) and miscellaneous nonutility expenses (Account 426), respectively, and should not be included in miscellaneous revenues in this case. Witness Lubertozi further testified that property on which the antennas are connected belongs to the utility rather than the ratepayer and that the rates paid by the customers do not entitle them to any equitable interest in the Company's property. Witness Lubertozi also testified that the Public Staff's position does not consider the fact that the assets on which the antennas are attached were contributed, and that the Company is not earning a return on the assets in question.

The Commission agrees with the Public Staff that the revenues from antenna space rentals are incidental revenues and should be included in miscellaneous revenues in this case. This treatment is consistent with the treatment of pole attachment revenues for electric companies, and with the treatment of antenna lease revenues for Heater Utilities, Inc. The Commission does not agree that the appropriate accounts for the leases are nonutility income and expense accounts, as stated by Company witness Lubertozi. Under the Uniform System of Accounts (USoA) for Class A Water Utilities, which the Company should be following under Rule R7-35, revenues from antenna space rentals should be included in water operating revenues under Account 472 - Rents from Water Property. As stated in the USoA, this account shall include rents received for the use by others of land, buildings and other property devoted to water operations by the utility.

The fact that the elevated tanks to which the antennas are attached may have been contributed to the utility does not change the proper ratemaking and accounting treatment of these revenues. If the tanks were contributed, the shareholders have no investment in the property generating the revenues, and should not receive a windfall from the leases. Also, if the tanks were contributed, the developers who contributed the tanks recovered their costs through the sale of lots, so that, ultimately, the ratepayers have paid for the tanks. Finally, even though the Company proposes to include the revenues in nonutility income, the Company does not propose allocating any of the costs associated with the tanks, such as maintenance, property taxes, and depreciation expense, to nonutility operations.

## UNCOLLECTIBLE ACCOUNTS

The difference between the Company and the Public Staff regarding uncollectible accounts results from the application of the uncollectible percentages to different levels of service and miscellaneous revenues recommended by the Company and the Public Staff. Having determined the appropriate level of service and miscellaneous revenues elsewhere in this Order, the Commission concludes that the appropriate level of uncollectible accounts is \$36,552 for water operations and \$27,855 for sewer operations.

### SUMMARY CONCLUSION

Based on the foregoing, the Commission finds and concludes that the appropriate level of revenues under present rates for use in this proceeding is \$12,460,347, of which \$7,068,326 is applicable to water operations and \$5,392,021 is applicable to sewer operations.

### EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 61

The evidence supporting this finding is contained in the testimony of Public Staff witness Lucas and Company witnesses Lubertozi and Daniel and is not contested in this proceeding.

### EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 62 - 72

The evidence supporting these findings is contained in the testimony of Public Staff witnesses Henry, Lucas and Fernald and Company witnesses Lubertozi, Weeks and Daniel. The following tables summarize the amounts that the Company and the Public Staff contend are the proper levels of maintenance expenses to be used in this proceeding:

#### WATER OPERATIONS

<u>Item</u>	<u>Company</u>	<u>Public Staff</u>	<u>Difference</u>
Salaries and wages	\$ 1,373,215	\$ 1,102,285	\$ (270,930)
Purchased power	560,302	560,302	0
Purchased water	422,317	395,489	(26,828)
Maintenance and repairs	577,615	577,333	(282)
Maintenance testing	91,538	91,538	0
Meter reading	113,475	113,475	0
Chemicals	230,736	230,736	0
Transportation	126,026	126,026	0
Operating expenses charges to plant	(568,099)	(456,015)	112,084
Outside services - other	<u>167,857</u>	<u>88,710</u>	<u>(79,147)</u>
Total maintenance expenses	<u>\$ 3,094,982</u>	<u>\$ 2,829,879</u>	<u>\$ (265,103)</u>

## SEWER OPERATIONS

<u>Item</u>	<u>Company</u>	<u>Public Staff</u>	<u>Difference</u>
Salaries and wages	\$ 827,448	\$ 664,196	\$ (163,252)
Purchased power	467,906	467,906	0
Purchased sewer	12,788	12,788	0
Maintenance and repairs	1,451,783	1,341,033	(110,750)
Maintenance testing	166,681	166,681	0
Meter reading	0	0	0
Chemicals	139,033	139,033	0
Transportation	75,939	75,939	0
Operating expenses charges to plant	(342,315)	(274,778)	67,537
Outside services – other	<u>53,454</u>	<u>53,454</u>	<u>0</u>
 Total maintenance expenses	 <u>\$ 2,852,717</u>	 <u>\$ 2,646,252</u>	 <u>\$ (206,465)</u>

As shown in the preceding tables, the Public Staff and the Company agree on the levels of purchased power, purchased sewer, maintenance testing, meter reading, chemicals, transportation, and sewer outside services – other. Therefore, the Commission finds and concludes that the levels agreed to by the parties for these items are appropriate for use in this proceeding.

## SALARIES AND WAGES

CWS has included in salary and wage expense costs for additional employees needed to comply with newly required daily chlorine testing. CWS witness Daniel explained the need for the new employees. N.C. Division of Environmental Health (DEH), pursuant to Rule #T15A: 18A. 1303(b), currently is requiring the daily chlorine residual monitoring (365 days/year) of chlorine residuals of all entry points and in the distribution system of water systems. Several of DEH's compliance inspection reports of CWS systems noted deficiencies for water systems not conducting daily chlorine checks.

Witness Daniel testified that CWS has evaluated the new DEH requirement to determine the most feasible and economical way of complying with this rule. Due to the significant number of CWS water systems and entry points spread across North Carolina, witness Daniel testified that CWS would require an additional 15 certified operators to conduct the daily chlorine residual tests of each entry point and in the water distribution system.

Witness Daniel testified that CWS had begun the hiring process for the 15 operators. CWS is advertising for additional operators throughout the state. CWS also has implemented an Employee Hiring Incentive Bonus Program rewarding existing employees who refer eligible applicants. If the referred applicant is hired and completes

his or her probationary period, the referring employee receives an incentive bonus. Witness Daniel testified that the Public Staff and the Commission Staff both are aware of the new DEH requirement and the cost impact on the CWS customers and CWS as well as other water companies throughout the State.

The Commission determines that it should allow the costs CWS must incur to comply with the new regulatory requirements to be included in salaries and wages expense for rate-making purposes.. The new daily chlorine testing is a known and measurable change that was in place before the hearing in this case concluded. CWS has also, prior to the close of the case, begun to undertake the steps to comply with these new requirements. Compliance with the requirements is not optional. CWS must comply. These requirements are imposed on CWS by environmental regulators. Should the Commission refuse to allow recovery of these costs, CWS will be adding significant costs to fulfill its service responsibilities to its customers that will not be recovered through rates. This will result in immediate attrition and pressure to again increase rates.

The Commission concludes that salaries of \$434,182 for fifteen new certified operators should be included in this case.

#### PURCHASED WATER

The parties disagree on the amount of purchased water expense. In its application for a rate increase, the Company applied an inflation adjustment to the cost of purchased water to recognize price increases. The Public Staff agreed that purchased water expense should be included in the inflation adjustment and made a similar adjustment in its prefiled testimony. At that point in time, the parties were in agreement on this issue. However, in his rebuttal testimony, Company witness Lubertozzi proposed an adjustment to purchased water expense to recognize increases in the rates charged by seven CWS providers. Witness Lubertozzi also applied the inflation adjustment to his adjusted level of purchased water expense, including the separate adjustment that he had already made to purchased water to recognize increases in prices. Finally, in the final exhibits filed by the Company on January 7, 2005, the Company revised the calculation of the inflation adjustment to exclude the adjustment that it had made to purchased water expense to reflect the increase in prices.

The disagreement between the parties concerns how price changes for purchased water should be recognized. This disagreement did not arise until the Company filed its rebuttal testimony, at which time it proposed a new adjustment to purchased water to recognize the increase in charges by its suppliers. Company witness Lubertozzi testified that, after reviewing the purchased water invoices, he determined that seven of the providers had increased either their base facility or usage charges. Witness Lubertozzi adjusted purchased water expense to recognize these price increases. Public Staff witness Lucas testified at the hearing that some of the

items to which the inflation factor had been applied may have gone up by more than the 3.3% inflation factor and some may have gone up by less than 3.3%. Therefore, he recommended against pulling out a single item, such as purchased water and increasing it independently of the others. Witness Lucas also testified that he had not been able to review all of the Company's purchased water invoices for 2003.

The Commission agrees with the Public Staff on this issue. The Company has, in effect, made an adjustment to recognize price increases for purchased water twice, once through the inflation adjustment, and again by making a separate adjustment to purchased water expense for price increases. The Company appears to try to recognize this problem in its final schedules, but only removes the adjustment to purchased water from the inflation calculation, and not the total purchased water costs.

An inflation adjustment is made in order to recognize the overall increase in costs for a variety of expenses. Some of these expenses may not have changed since the test year. Some may have increased by less than the inflation adjustment, and some may have increased by more. Separating a portion of one expense from the many expenses adjusted for inflation is not appropriate. Therefore, the Commission concludes that the appropriate amount of purchased water expense is \$395,489 before any annualization and inflation adjustments.

#### MAINTENANCE AND REPAIRS

The difference in the levels of maintenance and repairs recommended by the Company and the Public Staff is composed of the following:

<u>Item</u>	<u>Water</u>	<u>Sewer</u>
Deferred charges	\$ (282)	\$ (2,666)
Maintenance and repairs – sludge removal	<u>0</u>	<u>(108,084)</u>
Total	<u>\$ (282)</u>	<u>\$(110,750)</u>

#### Deferred Charges

The parties disagree on the level of amortization of deferred charges to include in expenses. In her rebuttal testimony, Company witness Weeks testified that \$72 was missing from the Public Staff's recommended level of deferred expenses. Public Staff witness Henry testified at the hearing that the error of \$72 relating to the amortization of deferred charges for water operations should be corrected. Based on the testimony of the parties at the hearing, it appeared that they were in agreement on the level of deferred expenses to be included in this case. However, when the Company filed its final schedules on January 7, 2005, it increased the level of deferred expenses from \$151,992 to \$197,924. In the final schedules filed by the Public Staff on January 12, 2005, the Public Staff increased deferred expenses to \$194,976, which is

\$2,948 less than the Company's final amounts. The Company has not provided any testimony or evidence supporting the increase in deferred expenses. Since the Company has failed to provide evidence supporting any additional deferred expenses above the amount included by the Public Staff in its final schedules, the Commission concludes that the levels proposed by the Public Staff are appropriate for use in this proceeding.

#### Maintenance and Repairs - Sludge Removal

The parties disagree on the amount of sludge hauling expense, which covers all expenses related to sludge transport and disposal. Public Staff witness Lucas recommended a sludge hauling expense of \$757,834, before the inflation adjustment. The Company recommended that the sludge hauling expense remain at the test year level of \$865,918.

CWS relies on Bio-Tech, Inc., an affiliated company, to dispose of a substantial percentage of its sludge. Witness Lucas testified that CWS can accomplish its sludge transport and disposal for less expense than using Bio-Tech. Bio-Tech charges 4 to 5 cents per gallon to dispose of sludge from the CWS sewer plants in the Charlotte area. Witness Lucas testified that less expensive options exist in the Charlotte area. Witness Lucas testified that Bio-Tech charges 4 cents per gallon for sludge disposal. However, the Water and Sewer Authority of Cabarrus County charges 3 cents per gallon, and CMU charges 3.5 cents per gallon. According to witness Lucas, Bio-Tech charges 5 cents per gallon to transport sludge to the Bio-Tech disposal site near Columbia, South Carolina.

Witness Lucas calculated that Bio-Tech's total sludge transport and disposal cost during 2003 ranged from 7 to 10 cents per gallon for sewer plants in the Charlotte area. Witness Lucas calculated that an alternative provider CWS uses in the Charlotte area charges 6.75 cents per gallon for transport and disposal. For CWS's Old Point sewer plant in Pender County, Bio-Tech charges 10 cents per gallon, while the alternative provider charges 8.93 cents per gallon. Witness Lucas recommends that CWS always use the lowest cost option.

CWS witnesses Daniel and Lubertozzi testified in opposition to witness Lucas sludge hauling adjustment. They testified that CWS must look into aspects of sludge hauling services other than the bottom line costs. Reliability and quality also are important.

Witness Daniel testified that Bio-Tech has large sludge holding tanks and an application site that are designed to allow Bio-Tech to haul sludge 365 days per year; therefore, Bio-Tech's sludge hauling capabilities are much less affected by weather. Witness Daniel testified that smaller sludge hauling contractors do not have storage capabilities and haul with smaller tank trucks directly to their disposal sites where the sludge must be immediately applied.

Witness Daniel related instances where CWS had been denied service during rainy conditions because the application fields were too wet. He testified that the inability of these alternative providers to haul sludge lasted from one to several days. This placed the CWS plants in jeopardy of non-compliance. In contrast, Bio-Tech has never denied service.

Witness Daniel testified that Bio-Tech conducts a quality operation that protects CWS against potential liabilities and reduces CWS's operations expense by providing testing and reporting services other sludge hauling contractors do not provide. In particular, Bio-Tech provides toxicity character leaching procedure (TCLP) testing on a reoccurring basis. Other sludge hauling contractors require the utility to conduct this testing at its own expense.

Witness Daniel testified that Bio-Tech performs Microtox testing on every load of sludge transported to its facility to ensure that Bio-Tech limits CWS's liability. This testing insures that there is evidence that CWS's sludge is not hazardous to the environment. Most other sludge hauling contractors require the utility to be responsible for this liability.

Witness Daniel testified that small waste haulers who directly apply sludge to their fields require CWS to stabilize sludge to a 12 pH before it is hauled. Most sludge has a natural pH of 6.8 to 7.5.

CWS witness Lubertozi testified that Bio-Tech provides a higher level of service and more services than some of the vendors identified by witness Lucas. Witness Lubertozi testified that the Public Staff had failed to include in its analysis whether the "local" providers can accommodate the amount of sludge CWS produces. Witness Lubertozi conducted his own analysis and concluded that the charges by the local providers as reported by witness Lucas were inconsistent with actual costs.

When witness Lubertozi contacted the local providers listed by witness Lucas, some advised that they do not perform the testing services Bio-Tech provides. Others cannot haul sludge. Witness Lubertozi testified that CWS would have to contract with a licensed waste hauler.

Witness Lubertozi communicated with Bio-Nomic, Inc., which reported that it would charge CWS 3 cents to 4 cents per gallon to haul CWS's sludge. Contrary to what the Public Staff had reported, Bio-Nomic reported that it could not haul sludge for 2 cents per gallon because 2 cents per gallon would not cover the cost of fuel for the hauling truck.

Another local provider contacted by witness Lubertozi reported that it did not wish to haul the CWS sludge or to undertake the responsibility or liability for accepting CWS's sludge. Other local providers stated that they too would be unwilling to accept

the CWS sludge at the price stated by witness Lucas without more information on the percent to solid ratio, volume and frequency.

Based on information provided by witness Lucas, witness Lubertozi calculated an average cost for all providers of \$0.0923 per gallon, an average cost for providers excluding Bio-Tech of \$0.0967, and a Bio-Tech cost per gallon of \$0.0876. Witness Lubertozi concluded from this analysis that the Public Staff analysis may be skewed by vendors willing to quote a lower price in an attempt to obtain new business. Witness Lubertozi testified that price should not be the only consideration taken into account in determining whether sludge hauling costs should be recovered. Witness Lubertozi testified that management's decision to hire Bio-Tech was a prudent one, and it is inappropriate to second guess this decision on the basis of hindsight as the Public Staff has done.

The Commission concludes that it should reject the Public Staff adjustment and include the full Bio-Tech test year costs in maintenance and repair cost. The Public Staff investigation has been one to identify the lowest possible cost combination of service without appropriate regard to other salient factors such as reliability and quality of service. It is inappropriate to disallow actual costs on the theory that for some sewage treatment plants a lower cost provider is available without obtaining assurances that the low-cost alternative provider can provide a comparable level of service. If for certain sewage treatment plants, CWS can save sludge hauling costs by using a local provider rather than Bio-Tech, but if CWS must incur additional costs for pH-balance or testing, the net impact may be no net financial benefit at all. The Public Staff has failed to include the additional costs in cost of service CWS would incur if it had not used Bio-Tech but other providers that did not test or balance the pH.

Based on the cross-examination it appears that CWS has more options in the Piedmont area than in the less populous areas of the State such as on the Eastern Seaboard. Obviously, CWS and its ratepayers benefit from the ability to have access to a readily available, reasonably priced sludge hauling provider that will not withhold its services for the difficult to serve routes.

Based on the foregoing, the Commission concludes that the appropriate amount for maintenance and repairs expense is \$577,333 for water operations and \$1,449,117 for sewer operations.

#### OPERATING EXPENSE CHARGED TO PLANT

The only difference in the parties' levels of operating expenses charged to plant relates to an adjustment made by the Company to increase maintenance salaries for fifteen additional operators. Both the Company and the Public Staff used the same methodology to calculate operating expenses charged to plant but disagree on the amount of maintenance salaries that should be used in the computation of an ongoing level of expense. Having determined the appropriate level of maintenance salaries

elsewhere in this Order, the Commission concludes that the appropriate level of operating expenses charged to plant is \$910,414, of which \$568,099 is applicable for water operations and \$342,315 is applicable to sewer operations.

#### WATER OUTSIDE SERVICES – OTHER

The only area of disagreement between CWS and the Public Staff concerning outside services for water operations is related to legal fees for Pine Knoll Shores (PKS) incurred from 1995 through 2002. The Public Staff removed these legal fees from plant in service and excluded them from test year expenses, while the Company also removed these legal fees from plant in service but amortized them to expenses over a seven-year period.

The Public Staff argues that the legal fees associated with CWS's PKS litigation are improperly listed under the category of organizational costs. The Public Staff believes that these expenses, incurred between 1995 and 2002, should be accounted for under the Other category. The Public Staff bases its proposition on the fact that the legal fees do not fit under the category of organizational costs as defined in the Uniform System of Accounts.<sup>2</sup> Further, he believes that the fees should not be recovered from the ratepayers as an expense because the utility's customers did not benefit from the lawsuit.

Although CWS agrees that the legal fees do not fit neatly under the organizational costs category, it nevertheless feels the costs should be amortized. CWS further alleges that the Public Staff has made a determination without understanding the history of the litigation or the other issues addressed by the parties. Overall, CWS claims that the litigation was undertaken on behalf of its ratepayers and the ratepayer's interests were benefited.

The Commission, like the Public Staff and CWS, recognizes that the legal fees do not fit within the definition of category costs provided by the Uniform System of Accounts. However, the Commission does not entirely agree with both parties regarding the litigation costs. It is clear from CWS description of the history that both ratepayers and shareholders actually benefited to some degree from CWS' participation in this litigation. As CWS indicated in its proposed order, in 1995 the Town approached CWS about transferring the water system. When CWS refused, the Town began constructing a duplicate system paralleling CWS's lines. This led to a bevy of court proceedings in which it was finally decided that the restrictive covenants upon which CWS relied did not preclude the Town from building its system. The Town ultimately was unable to continue its efforts with the system.

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<sup>2</sup> According to the Public Staff, the National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts (USOA) for Class A water utilities defines organizational costs as: all fees paid to federal or state governments for the privilege of incorporation and expenditures incident to organizing the corporation, partnership or other enterprise and putting it into readiness to do business.

The Commission believes, upon consideration of the entire record, that the legal expenses in question were actually incurred in the course of the Company's operations. In addition, the Commission believes that, while the legal expenses in question were primarily incurred for the benefit of the Company's stockholders, they also had potential benefits for the ratepayers for the reasons given by CWS. As a result, in the exercise of its discretion, the Commission concludes that one-half of the legal fees in question should be treated as an allowable operating expense and amortized to rates.

Based on the foregoing, the Commission concludes that the appropriate level of outside services - other for water operations is \$128,284.

#### SUMMARY CONCLUSION

Based on the foregoing, the Commission finds and concludes that the appropriate level of maintenance expenses for use in this proceeding is \$5,878,350, of which \$3,028,299 is applicable to water operations and \$2,850,051 is applicable to sewer operations.

#### EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 73 - 83

The evidence supporting these findings is contained in the testimony of Public Staff witnesses Henry, Lucas and Fernald and Company witnesses Lubertozzi, Weeks and Daniel. The following tables summarize the amounts that the Company and the Public Staff contend are the proper levels of general expenses to be used in this proceeding:

#### WATER OPERATIONS

<u>Item</u>	<u>Company</u>	<u>Public Staff</u>	<u>Difference</u>
Salaries and wages	\$ 431,734	\$ 400,523	\$ (31,211)
Office supplies & other office expense	203,702	203,702	0
Regulatory commission expense	46,004	26,083	(19,921)
Pension and other benefits	382,591	296,675	(85,916)
Rent	35,696	35,696	0
Insurance	202,068	202,068	0
Office utilities	100,749	100,749	0
Miscellaneous	45,235	45,235	0
WSC expense adjustment	(20,807)	(20,807)	0
Interest on customer deposits	14,768	14,768	0
Annualization adjustment	149,210	204,159	54,949
Inflation adjustment	84,930	83,302	(1,628)
Total general expenses	<u>\$ 1,675,880</u>	<u>\$ 1,592,153</u>	<u>\$ (83,727)</u>

### SEWER OPERATIONS

<u>Item</u>	<u>Company</u>	<u>Public Staff</u>	<u>Difference</u>
Salaries and wages	\$ 260,147	\$ 241,340	\$ (18,807)
Office supplies & other office expense	122,744	122,744	0
Regulatory commission expense	27,720	15,716	(12,004)
Pension and other benefits	230,536	178,765	(51,771)
Rent	21,509	21,509	0
Insurance	121,759	121,759	0
Office utilities	60,708	60,708	0
Miscellaneous	23,849	23,849	0
WSC expense adjustment	(12,537)	(12,537)	0
Interest on customer deposits	8,899	8,899	0
Annualization adjustment	322,593	329,769	7,176
Inflation adjustment	<u>93,184</u>	<u>88,061</u>	<u>(5,123)</u>
 Total general expenses	 <u>\$ 1,281,111</u>	 <u>\$ 1,200,582</u>	 <u>\$ (80,529)</u>

As shown in the preceding tables, the Public Staff and the Company agree on the levels of office supplies and other office expense, rent, insurance, office utilities, miscellaneous, WSC expense adjustment, and interest on customer deposits. Therefore, the Commission finds and concludes that the levels agreed to by the parties for these items are appropriate for use in this proceeding.

### SALARIES AND WAGES

The difference in the level of general salaries and wages recommended by the parties relates to the following items:

<u>Item</u>	<u>Water</u>	<u>Sewer</u>
Reclassification of operator	\$ 3,109	\$ 1,873
Project manager	<u>(34,320)</u>	<u>(20,680)</u>
 Total	 <u>\$(31,211)</u>	 <u>\$ (18,807)</u>

The first area of difference between the parties pertains to reclassification of an operator hired after the end of the test year from general salaries to maintenance salaries. Both CWS and the Public Staff agree that this adjustment should be made but disagree on the amount that should be reclassified as maintenance salaries. Company Witness Weeks reclassified \$11,440 of general salaries to maintenance salaries while the Public Staff only reclassified \$6,458. The difference of \$4,982 represents the amount that was allocated to other North Carolina companies by Public Staff witness Henry and not included in his prefiled exhibit as general salaries. Both parties are in

agreement on the percentage of general salaries that should be allocated to other North Carolina companies.

CWS' calculation of general salaries in its revised rebuttal exhibits begins with the amount recommended by witness Henry in his prefiled exhibit, which did not include the \$4,982 amount allocated to other North Carolina companies. Witness Weeks adjusted witness Henry's recommended general salaries to reclassify this new operator and consequently, removed more general salaries than was allocated to CWS. The Commission, therefore, concludes that \$4,982 of salaries should be added back to general salaries in order to correct the Company's error.

The remaining difference between the Company and the Public Staff involves the salary of a project manager. CWS is attempting to fill a project manager position to meet increased regulatory requirements. At the time of his testimony, witness Daniel was reviewing resumes of those seeking the position. Witness Daniel testified that the duties of the project manager will include regulatory tracking and compliance, the preparation of Consumer Confidence Reports, Vulnerability Assessments, NPDES and PWS permit tracking and renewals, and annual reports. Also, this position will require the development of a system wide database and its continued update.

In addition, the project manager will be accountable for providing operational data as it pertains to the filing of contracts with the Commission. The project manager will ensure that all CIAC is consistent with Commission approved contracts, which will be accomplished by compiling and maintaining a data base of authorized connection, tap and management fees. The data base will be an essential tool to CWS and will be available to the Public Staff in future rate proceedings so as to alleviate some of the Public Staff concerns expressed in this case.

The Commission concludes that a project manager position is needed to meet increased regulatory requirements and that a salary of \$55,000 for a project manager should be included in this case.

Based on the foregoing, the Commission concludes that the appropriate level of general salaries is \$434,843 for water operations and \$262,020 for sewer operations.

#### REGULATORY COMMISSION EXPENSE

The Company and the Public Staff differ on the appropriate amount of rate case expense in essentially two respects. The first involves an adjustment made by the Public Staff to reduce the hourly rate for Mr. Finley's legal fees to \$250 per hour.

The Public Staff has adjusted the hourly rate attorney fee to reflect what it contends to be a reasonable fee level. The Public Staff has used a budgeted amount of approximately \$13,000 for legal fees. The Public Staff notes that Mr. Finley's hourly rate is \$380, a 52% increase from \$250 hourly rate which he charged three years ago in the

Total Environment Solutions, Inc. rate case, Docket No. W-1146, Sub 1. In the last general rate case for CWS, the Commission found that the \$220 hourly rate charged by Mr. Finely for CWS was unreasonable and reduced legal fees recoverable in that case to reflect an hourly rate of \$175. The Public Staff claims that the legal fee hourly amount is not reasonable and has recommended adjustments to \$250 an hour.

CWS argues that the fees it pays are reasonable for a firm such as Hunton & Williams and is based on market conditions, years of experience, expertise and other factors. CWS further argues that the Public Staff has not done a sufficient analysis of the fee prior to acting to reduce it. Moreover, CWS argues that Public Staff has not made any adjustments to the actual costs incurred by the company other than attorney fees.

The Commission shares the Public Staff's concern regarding the issue of legal fees and believes that legal fees must be reasonable. However, the Commission does not agree with the Public Staff that \$250 is a reasonable hourly attorney rate. In considering the time and date of the last rate case, the Commission finds that \$300 an hour for legal services is a reasonable fee.

The second area of disagreement involves the Public Staff's use of a five-year amortization period for rate case expenses versus the Company's recommendation of a three-year period.

Public Staff witness Henry recommends that rate case expenses should be amortized over five years. He testified that seven years have passed since the Company filed a rate case in the Sub 165 proceeding. Prior to that, three years passed between the Sub 128 and Sub 165 rate case filings. Witness Henry testified that based on these recent rate case proceedings, CWS has on average filed for a rate increase every five years. Therefore, he testified, a five year amortization period for rate case costs would be more appropriate than the Company's three year amortization period.

CWS witness Lubertozzi testified in rebuttal. He testified that, based on a review of the Company's prior filings, the average period between the Company's rate case filings is three years. Witness Henry only used the last three cases.

The Commission concludes that it should amortize the costs over three years. A review of the Commission's official files indicates the following history of CWS rate cases: Docket No. W-354, Sub 16 (1981); Docket No. W-354, Sub 26 (1983); Docket No. W-354, Sub 39 (1985); Docket No. W-354, Sub 69 (1988); Docket No. W-354, Sub 91 (1989); Docket No. W-354, Sub 111 (1992); Docket No. W-354, Sub 128 (1994); Docket No. W-354, Sub 135 (1995) (withdrawn); Docket No. W-354, Sub 266 (2004). The average interval is approximately three years between cases. Historically, the Commission has used a three year amortization period. If the amortization period is too long, the costs of the case are not recovered from the ratepayers that were taking service during the test year and who imposed on the Company the increased costs

requiring the request for a rate increase nor the ratepayers who will be taking service at the time the rates are adjusted, but by a future generation of ratepayers. The rate case amortization period should be accurately matched to be recovered from the ratepayers that will be taking service while the rates are in effect.

Based on the foregoing, the Commission determines an appropriate level of total rate case costs to be \$213,678. Based on a three year amortization period, the annual level of regulatory commission expense to include in this proceeding is \$71,226.

#### PENSION AND OTHER BENEFITS

The difference between the parties over pensions and other benefits arises from differences over salaries and wages. Based on resolution of those issues above, the Commission determines that the appropriate level of pensions and other benefits is \$613,126, of which \$382,591 is for water operations and \$230,536 is for sewer operations.

#### ANNUALIZATION ADJUSTMENT

Both parties are in agreement on the methodology and expense categories to use in calculating an annualization adjustment. The parties disagree on the expense amounts for purchased water and maintenance and repairs that should be used to calculate an annualization adjustment. The Company and Public Staff also disagree on the water consumption factor to apply to the annualization expenses. Based on the Commission's findings elsewhere in this Order regarding purchased water and maintenance and repairs and the appropriate annualization and consumption percentages, the Commission concludes that the appropriate annualization adjustment is \$204,159 for water operations and \$348,792 for sewer operations.

#### INFLATION ADJUSTMENT

The Company and the Public Staff are in agreement on methodology and the inflation factor, but disagree on the level of expenses to which the factor should be applied. Specifically, the parties disagree on the expense amounts for purchased water, maintenance and repairs, and outside services - other that should be used to calculate an inflation adjustment. Based on the Commission's findings reached elsewhere in this Order regarding purchased water, maintenance and repairs and outside services - other, the Commission concludes that the appropriate inflation adjustment is \$83,302 for water operations and \$92,255 for sewer operations.

#### SUMMARY CONCLUSION

Based on the foregoing, the Commission finds and concludes that the appropriate level of general expenses for use in this proceeding is \$3,038,065, of which \$1,730,751 is applicable to water operations, and \$1,307,315 is applicable to sewer operations.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 84 - 88

The evidence supporting these findings is contained in the testimony of Public Staff witnesses Henry, Lucas and Fernald, and Company witnesses Lubertozzi, Weeks and Daniel. The following tables summarize the amounts that the Company and the Public Staff contend are the proper levels of depreciation and taxes to be used in this proceeding:

WATER OPERATIONS

<u>Item</u>	<u>Company</u>	<u>Public Staff</u>	<u>Difference</u>
Depreciation net of PAA & CIAC	\$ 733,357	\$ 731,150	\$ (2,207)
Amortization of ITC	(311)	(311)	0
Taxes other than income	8	8	0
Property taxes	95,614	95,614	0
Payroll taxes	139,148	116,438	(22,710)
Regulatory fee	8,482	8,482	0
Gross receipts tax	282,733	282,733	0
State income tax	59,659	42,310	(17,349)
Federal income tax	<u>273,688</u>	<u>194,100</u>	<u>(79,588)</u>
Total depreciation and taxes	<u>\$ 1,592,378</u>	<u>\$ 1,470,524</u>	<u>\$ (121,854)</u>

SEWER OPERATIONS

<u>Item</u>	<u>Company</u>	<u>Public Staff</u>	<u>Difference</u>
Depreciation net of PAA & CIAC	\$ 379,387	\$ 378,243	\$ (1,144)
Amortization of ITC	(208)	(208)	0
Taxes other than income	5	5	0
Property taxes	57,613	57,613	0
Payroll taxes	69,986	70,162	176
Regulatory fee	6,470	6,470	0
Gross receipts tax	323,521	323,521	0
State income tax	32,856	18,728	(14,128)
Federal income tax	<u>150,729</u>	<u>85,914</u>	<u>(64,815)</u>
Total depreciation and taxes	<u>\$ 1,020,359</u>	<u>\$ 940,448</u>	<u>\$ (79,911)</u>

As shown in the preceding tables, the Public Staff and the Company agree on the levels of amortization of ITC, taxes other than income, property taxes, regulatory fee, and gross receipts tax. Therefore, the Commission finds and concludes that the levels agreed to by the parties for these items are appropriate for use in this proceeding.

## DEPRECIATION NET OF PAA & ITC

The difference between CWS and the Public Staff regarding depreciation net of PAA and ITC results from the parties' disagreement over the levels of CIAC that should be deducted from plant in service in determining depreciable plant. Based on the conclusions concerning CIAC reached elsewhere in this Order, the Commission concludes that the amount of depreciation expense proposed by the Public Staff is reasonable and appropriate for use in this proceeding.

## PAYROLL TAXES

The difference between the Company and the Public Staff regarding payroll taxes results from the parties' disagreement over the appropriate level of salaries and wages to include in this proceeding. Having previously determined the appropriate level of salaries and wages for maintenance expenses and general expenses, the Commission concludes that the appropriate level of payroll taxes is \$209,134, of which \$139,148 is for water operations and \$69,986 is for sewer operations.

## STATE INCOME TAX

The Company and the Public Staff are recommending different levels of state income tax due to differing levels of revenues and expenses recommended by each party. Based upon conclusions reached elsewhere in this Order regarding the levels of revenues and expenses, the Commission finds and concludes that the appropriate levels of state income tax for use in this proceeding are \$16,046 for water operations and \$0 for sewer operations.

## FEDERAL INCOME TAX

The Company and the Public Staff are recommending different levels of federal income tax due to differing levels of revenues and expenses recommended by each party. Based upon conclusions reached elsewhere in this Order regarding the levels of revenues and expenses, the Commission finds and concludes that the appropriate level of federal income tax for use in this proceeding is \$67,686 for water operations and \$0 for sewer operations.

## SUMMARY CONCLUSION

Based on the foregoing, the Commission finds and concludes that the appropriate level of depreciation and taxes for use in this proceeding is \$2,176,186, of which \$1,340,556 is applicable to water operations and \$835,630 is applicable to sewer operations.

**EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 89 - 91**

The evidence supporting these findings is contained in the Joint Partial Settlement Agreement filed by the parties on April 28, 2004.

**EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 92**

The following schedules summarize the gross revenue and rate of return that the Company should have a reasonable opportunity to achieve based upon the increase approved in this Order. These schedules, illustrating the Company's gross revenue requirements, incorporate the findings and conclusions found fair by the Commission in this Order.

SCHEDULE I

CAROLINA WATER SERVICE, INC. OF NORTH CAROLINA  
 DOCKET NO. W-354, SUB 266  
 STATEMENT OF OPERATING INCOME AVAILABLE FOR RETURN  
 COMBINED OPERATIONS

For the Twelve Months Ended December 31, 2003, Updated to June 30, 2004

<u>Item</u>	<u>Present Rates</u>	<u>Increase Approved</u>	<u>After Approved Increase</u>
Operating revenues:			
Service revenues	\$12,253,201	\$2,174,614	14,427,815
Miscellaneous revenues	271,553	8,209	279,762
Uncollectible accounts	<u>(64,407)</u>	<u>(11,433)</u>	<u>(75,840)</u>
Total operating revenues	<u>12,460,347</u>	<u>2,171,390</u>	<u>14,631,737</u>
Operating revenue deductions:			
Maintenance expenses	5,878,350	0	5,878,350
General expenses	3,038,065	0	3,038,065
Depr. net of PAA & CIAC	1,109,393	0	1,109,393
Amortization of ITC	(519)	0	(519)
Taxes other than income	13	0	13
Property taxes	153,227	0	153,227
Payroll taxes	209,134	0	209,134
Regulatory fee	14,952	2,607	17,559
Gross receipts tax	606,254	105,057	711,311
State income tax	16,046	138,578	154,624
Federal income tax	<u>67,686</u>	<u>641,659</u>	<u>709,345</u>
Total oper. revenue deductions	<u>11,092,601</u>	<u>887,901</u>	<u>11,980,502</u>
Net operating income for return	<u>\$ 1,367,746</u>	<u>\$1,283,489</u>	<u>\$ 2,651,235</u>

Δ \$1,283,489 - Net Income

SCHEDULE II

CAROLINA WATER SERVICE, INC. OF NORTH CAROLINA  
 DOCKET NO. W-354, SUB 266  
 STATEMENT OF RATE BASE AND RATE OF RETURN  
 COMBINED OPERATIONS

For the Twelve Months Ended December 31, 2003, Updated to June 30, 2004

<u>Item</u>	<u>Amount</u>
Plant in service	\$ 82,973,405
Accumulated depreciation	(13,898,212)
Cash working capital	848,514
Contributions in aid of construction	(33,953,071)
Advances in aid of construction	(44,780)
Accumulated deferred income taxes	(4,592,764)
Customer deposits	(392,487)
Gain on sale and flow back of taxes	(289,628)
Plant acquisition adjustment	(1,880,811)
Water Service Corporation	256,584
Pro forma plant	3,597,452
Deferred charges	708,721
Excess capacity	(122,896)
Excess book value	(2,296,948)
Cost-free capital	(104,308)
Allocation of CWS office plant cost	<u>(436,187)</u>
Rate base	<u>\$ 30,372,584</u>
Rates of Return:	
Present	4.50%
Approved	8.73%

SCHEDULE III

CAROLINA WATER SERVICE, INC. OF NORTH CAROLINA  
DOCKET NO. W-354, SUB 266  
STATEMENT OF CAPITALIZATION AND RELATED COSTS  
COMBINED OPERATIONS

For the Twelve Months Ended December 31, 2003, Updated to June 30, 2004

<u>Item</u>	<u>Ratio %</u>	<u>Original Cost Rate Base</u>	<u>Embedded Cost</u>	<u>Net Operating Income</u>
<u>Present Rates:</u>				
Debt	57.63%	\$17,503,720	7.28%	\$ 1,274,271
Equity	<u>42.37%</u>	<u>12,868,864</u>	.73%	<u>93,475</u>
Total	<u>100.00%</u>	<u>\$30,372,584</u>		<u>\$ 1,367,746</u>
<u>Approved Rates:</u>				
Debt	57.63%	\$17,503,720	7.28%	\$ 1,274,271
Equity	<u>42.37%</u>	<u>12,868,864</u>	10.70%	<u>1,376,964</u>
Total	<u>100.00%</u>	<u>\$30,372,584</u>		<u>\$ 2,651,235</u>

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 93

The evidence supporting this finding of fact is found in the testimony of Public Staff witness Fernald and Company witness Lubertozzi. Public Staff witness Fernald testified that she was concerned about how the Company determines what connection charges and plant modification fees to charge customers, since there have been instances when the Company did not collect fees in accordance with its tariff sheet. Witness Fernald stated that she had requested a copy of any lists, references, or other documents used by the Company, either at its Northbrook office or at the North Carolina offices, to determine the amount of fees to charge, but she had not received a response. Witness Fernald also testified that the list of connection charges and plant modification fees filed by the Company with its application did not reflect the tariff sheet or the actual fees being charged. Witness Fernald recommended that the Company prepare and file with its rebuttal testimony a complete and accurate list of all connection charges and plant modification fees for review by the Public Staff and Commission so that an accurate tariff sheet could be issued in this case.

Company witness Lubertozi testified that the Company currently has a list of authorized connection charges and plant modification fees, that the list is currently being revised and updated, and that the revised and updated list would be provided when the review was completed.

The connection charges and plant modification fees currently approved by the Commission are set forth in the tariff sheets attached as Appendix A to this Order. As previously stated in this Order, no future deviations from the Company's tariffed fees will be tolerated. The Commission concludes that the Company should carefully review the connection charges and plant modification fees set forth in these tariff sheets for accuracy and file any comments or proposed corrections within 30 days. If no comments or proposed corrections are filed within that period, the proposed list of connection charges and plant modification fees will be deemed approved.

#### EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 94

The evidence supporting this finding of fact is found in the testimony of Public Staff witness Fernald, and Company witness Weeks. Public Staff witness Fernald recommended that the Company be responsible for installing all meters, and no longer accept meters from developers. Witness Fernald also recommended that the Company be authorized to charge a meter fee of \$50 for 5/8 or 3/4 inch meters, and actual cost for meters greater than 5/8 or 3/4 inch for all metered water connections. Company witness Weeks agreed with the Public Staff's recommendations.

#### EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 95

The evidence supporting this finding for unmetered systems is contained in the testimony of Public Staff witness Lucas. The Company did not contest this finding.

#### EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 96 - 99

The evidence supporting these findings of fact is found in the testimony of Public Staff witness Fernald, and Company witnesses Weeks and Lubertozi. The Public Staff made the following accounting recommendations concerning the recording of CIAC on the Company's books:

- (1) That the Company begin recording management fees as CIAC, not revenues,
- (2) That the Company begin recording all monies received for main extensions or to offset plant costs as CIAC,
- (3) That the Company begin recording all reservation of capacity fees as CIAC on CWS's books,
- (4) That the Company make entries on its books to reflect the amount of CIAC found reasonable by the Commission in this case,

- (5) That the Company establish separate subaccounts for each form of CIAC, such as connection charges, plant modification fees, meter fees, management fees, reservation of capacity fees, contributed property, etc., and
- (6) That the Company begin making an entry at year-end to true up amortization of CIAC to reflect the actual amount of CIAC collected during the year.

Company witness Weeks agreed that the management fees and payments for main extensions should be included in CIAC. Therefore, the Commission concludes that the Company should begin recording management fees and payments for main extensions or to offset plant costs as CIAC on its books. Company witness Weeks disagreed with the Public Staff's position that reservation of capacity fees should be recorded as CIAC on the Company's books. Elsewhere in this Order the Commission has found that reservation of capacity fees are CIAC and should be treated as such in this case. Therefore, the Commission concludes that the Company should begin recording reservation of capacity fees as CIAC on CWS's books.

Company witness Lubertozi testified that the Company would reflect the adjustments made to CIAC in this case on its books and records. Therefore, the Commission concludes that the Company should make entries on its books to reflect the amount of CIAC found reasonable in this case. As to establishing separate subaccounts for each type of CIAC, witness Lubertozi testified that the "Company is currently reviewing the possibility of adding the additional accounts recommended by Staff and a recording mechanism to ensure accuracy." As noted under the discussion of CIAC, the Company receives several types of CIAC, including meter fees, management fees, and connection fees. The Commission believes that it would be useful to both the Company and the Commission and Public Staff if there were separate subaccounts for each type of CIAC received by the Company. Therefore, the Commission concludes that the Company should complete its evaluation of how separate subaccounts could be established and a recording mechanism to ensure accuracy could be erected, and file a report on its findings and recommendations with the Commission within 90 days of the effective date of this Order.

Finally, Company witness Lubertozi opposed the Public Staff's recommendation that an entry be made on the Company's books to true up the amortization of CIAC at year-end. Witness Lubertozi testified that the proposed recommendation will have no impact on the depreciation expense or amortization of CIAC on the utility's books and records, since any increase to amortization to CIAC would be offset by a corresponding increase to depreciation expense. Witness Lubertozi also pointed out that the Public Staff made no recommendation to true-up utility plant in service at the end of the year, and that the Public Staff's recommendation would result in a mismatch of amortization and depreciation expense. Based on witness Lubertozi's testimony, it appears that, along with including on its books an estimated amount for amortization of CIAC, the Company is also estimating the amount of depreciation expense that it records. Both

depreciation expense and amortization of CIAC recorded on the Company's books should be calculated based on the actual amounts of plant and CIAC for that period. Therefore, the Commission concludes that the Company should make an entry on its books at year-end to reflect the actual amount of depreciation expense and amortization of CIAC for the year. The Commission further concludes that the Company should file with the Commission within 90 days of this Order a report detailing the changes the Company will make to its calculation of depreciation expense and amortization of CIAC.

#### EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 100

The evidence for this finding of fact is found in the testimony of Public Staff witness Fernald and Company witnesses Lubertozi and Weeks. Public Staff witness Fernald testified that the Company allocated pension and 401(k) costs to the various Utilities, Inc. subsidiaries by dividing the total cost by the total salaries, including part-time employees. The Company then applied this percentage to the full time employee salaries to determine the amount of pension and 401(k) costs for each Company, resulting in a mismatch between how the factor was calculated and how it was applied. Witness Fernald recommended that the Company correct its allocation of pension and 401(k) costs and begin calculating the percentage for pension and 401(k) costs based on salaries for full time employees.

Company witness Lubertozi opposed the Public Staff's recommendation, stating that the recommendation was unduly burdensome to the Company, and that the mismatch that the Public Staff referred to is adjusted or corrected when the Company files a rate case. In its rebuttal testimony, the Company revised its calculation of pension and 401(k) costs to reflect the actual contribution percentages applied to the salaries for full time employees, instead of the allocation method used by the Company on its books.

The Commission concludes that, since the allocation of pension and 401(k) costs has been and will be corrected in rate cases, it is unnecessary to require the Company to revise its allocation of pension and 401(k) costs on its books.

#### EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 101

The evidence supporting this finding of fact is contained in the testimony of Public Staff witness Fernald and Company witness Lubertozi. Public Staff witness Fernald recommended that the Company begin recording revenues from antenna space rentals in miscellaneous income on CWS's books. Company witness Lubertozi testified that the revenues and associated legal fees should be recorded in nonutility income (Account 421) and miscellaneous nonutility expense (Account 426).

As discussed previously in this Order, under the USoA, revenues from antenna space rentals should be recorded in water operating revenues under Account 472 - Rents from Water Property.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 102

The evidence supporting this finding of fact is found in the testimony of Public Staff witness Henry and Company witness Lubertozi. Public Staff witness Henry testified that the Company does not take into account the plant modification fees received as an offset to plant costs in its AFUDC calculation. Witness Henry recommended that CWS evaluate how to appropriately account for the receipt of plant modification fees in its AFUDC calculation and file a revised policy.

Company witness Lubertozi testified that the Company does not believe that an offset to the construction work in process used to accrue AFUDC is appropriate. Witness Lubertozi stated that the plant modification fees represent less than 10% of the total capital expenditures for the Utilities, Inc. subsidiaries operating in North Carolina. Witness Lubertozi also testified that reducing the basis used to calculate AFUDC by plant modification fees assumes that the cost rate of these funds is zero, and does not evaluate the opportunity costs that have been lost. In addition, witness Lubertozi contended that a cost rate of zero or a reduction of CWIP would result in the Company paying customers interest on their plant modification fees as a reduction to rate base over the lives of the assets placed in service. Finally, witness Lubertozi stated that the Company's current practice has been previously reviewed and approved by the Commission and Public Staff.

As previously discussed by the Commission, plant modification fees are collected by the Company to cover the cost of expanding and improving backbone facilities. When the Company constructs these backbone facilities, it calculates AFUDC to recognize the cost of the funds spent by the Company during construction of the plant. However, the Company fails to recognize the fact that, at the same time, it is receiving or has received plant modification fees to cover these costs, so a portion of the construction costs are funded through CIAC by plant modification fees, rather than by the Company. Based on the foregoing, the Commission concludes that the receipt of plant modification fees should be recognized in the calculation of AFUDC. Therefore, the Commission concludes that the Company should evaluate how to appropriately take into account the receipt of plant modification fees and file its revised AFUDC policy within 90 days of the effective date of this Order.

As to the Company's implication that the impact of plant modification fees on CIAC is immaterial, the Company's calculation has two flaws. First, the Company included all Utilities, Inc.'s North Carolina subsidiaries in its calculation, not just CWS, so it does not accurately reflect the impact of the plant modification fees on the calculation of AFUDC for CWS. Second, the Company divided the plant modification fees by total capital expenditures. The plant modification fees are to cover the cost of constructing backbone facilities, and it would be more appropriate to divide the plant modification fees by the annual cost of constructing new backbone facilities, not total capital expenditures, including replacements, vehicles, and all other plant additions.

One of the reasons witness Lubertozi gave for not changing the AFUDC policy was that the current policy had been previously reviewed and approved by the Commission. However, witness Lubertozi was unable to point to an order where the Commission approved the policy. Witness Lubertozi did point to the recent rate case order for Transylvania Utilities, Inc. (TUI) in Docket No. W-1012, Sub 5 in support of his statement that the policy had been approved. The Company's AFUDC policy was not approved in that case. In fact, the stipulation in that case, which was filed on July 2, 2004, stated that "TUI agrees to evaluate how to appropriately take into account the tap fees received as an offset to plant costs in its AFUDC calculation. TUI shall file its revised AFUDC policy with the Commission within 60 days of the date that an order is issued in this case." Even if the policy has been previously approved by the Commission, that does not prevent the Commission from now recommending that the policy be changed on a go forward basis.

Finally, the Commission disagrees with the Company's contention that a zero cost rate or reduction in CWIP would result in the Company paying the customers interest on plant modification fees. The result of recognizing the receipt of plant modification fees is not to pay customers interest on the fees, but rather to prevent the Company from receiving in rate base interest on funds that were paid for by CIAC and not by the Company.

#### EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 103 - 104

The evidence supporting these findings of fact is contained in the testimony of Public Staff witnesses Lucas and Fernald and Company witness Lubertozi. The Company has transactions with an affiliated company, Bio-Tech, including transporting and disposing of sludge. Public Staff witness Fernald testified that in Docket No. W-1012, Sub 5, Utilities, Inc. agreed in the stipulation with the Public Staff that it would reduce the affiliated transactions between Bio-Tech and its North Carolina regulated subsidiaries, which would include CWS, to writing, and file the contracts with the Commission within 90 days of the effective date of the order in that case, but that Utilities, Inc. had failed to do so. Witness Fernald recommended that the Company immediately file the affiliated contracts with Bio-Tech, as required in Docket No. W-1012, Sub 5.

Company witness Lubertozi testified that the Company had reviewed its files but could not locate a copy of the Bio-Tech contract. Witness Lubertozi stated that the Company was hesitant to draft a new contract until the original contract had been located, but if the original contract could not be located by the culmination of this rate case, the Company would draft, execute, and file a new contract with the Commission within 30 days of the final order in this case.

The Commission concludes that the Company should file the affiliated contract with Bio-Tech within 30 days of the effective date of this Order. The Commission further concludes that Utilities, Inc. should also file contracts covering the affiliated transactions

between Bio-Tech and the North Carolina regulated companies other than CWS, as initially required in Docket No. W-1012, Sub 5, within 30 days of the effective date of this Order. The contract for each regulated company should be filed under the applicable docket number for that company.

#### EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 105 - 107

The evidence supporting these findings of fact is found in the testimony of Public Staff witness Fernald and Company witness Lubertozi. Public Staff witness Fernald testified that the Company is not filing contracts with developers within 30 days as required by the Commission and that the Company is also serving customers in contiguous extensions without first posting a bond. Witness Fernald recommended that the Company file any contracts with developers not previously filed with the Commission within 90 days of the date of the order in this case. Witness Fernald also recommended that the Company evaluate its current practices and prepare a procedure that ensures that the Company complies with the rules and regulations of the Commission, in particular the filing of contiguous extensions and posting of bonds before serving customers. Witness Fernald recommended that the Company file its procedure with the Commission within 60 days of the date of the order in this case. Finally, witness Fernald stated that the Public Staff was willing to assist the Company with any questions on how to complete the forms or other matters, but ultimately, it is the Company's responsibility to comply with Commission rules and regulations.

Company witness Weeks testified that the Company did not intentionally neglect to file the contracts referenced in Public Staff witness Fernald's testimony. Witness Weeks requested that the Commission approve the contracts for Windward Cove, Mt. Carmel - Harmony, Hemby - Tyson Construction, Mt. Carmel - Huber Construction, Lamplighter Village South - Marshall, Bent Tree (sewer operations), and Mountainside at Wolf Laurel as part of this proceeding. Company witness Lubertozi testified that, while the Company believes that it is current on all developer contracts, it is reviewing all files to determine if there are any other outstanding contracts. Witness Lubertozi further testified that no other company is required to file contracts within 30 days of execution and, that the current Commission rules prevent service to customers before the contracts are addressed by the Commission. Witness Lubertozi also testified that the Company had recently put procedures in place to ensure that all contracts are filed on a timely basis. Under these procedures, all executed contracts in North Carolina have a routing sheet to ensure that the employee responsible for filing the contract receives a copy. The Company also circulates a memo every two weeks advising all responsible departments of the status of the filing, what documents have been received from the developer, and what documents have been filed with the Commission. According to witness Lubertozi, these follow up memos allow operations personnel to review all open dockets at the Commission pertaining to extensions, and any discrepancies are reported to the regulatory department and immediately corrected.

The Commission's orders in Docket No. W-354, Subs 111 and 118, which were issued in 1992 and 1994, respectively, required that the Company file contracts or agreements with developers within 30 days of the signing of the agreements. As noted by Public Staff witness Fernald and acknowledged by the Company, the Company has not complied with this filing requirement. On the contrary, it has failed to file certain contracts for approval, and for certain contracts that it has filed, the Company has failed to file them within the required 30 days. The Company has requested that the Commission approve the contracts that it had failed to file with the Commission as part of this proceeding, noting that the contracts had been provided to the Public Staff through discovery. However, these contracts have not been officially filed with the Chief Clerk of the Commission, and not all of these contracts have been filed as exhibits in this case. Therefore, the Commission concludes that the Company should be required to file any contracts with developers not previously filed with the Commission within 90 days of the effective date of this Order, including but not limited to the contracts for Southwoods/ Brandywine, Windward Cove, Mt. Carmel - Hemby, Mt. Carmel - Huber Construction, Lamplighter Village South - Marshall, and Bent Tree (sewer operations).

The next question is whether the Commission should continue to require the Company to file all contracts with developers within 30 days. The Commission acknowledges that no other water and sewer utility has a similar requirement; however, this requirement was established due to circumstances specific to this Company, and the concerns and issues that caused the requirement to be initially established still exist. Contracts relating to new service areas and contiguous extensions of existing service areas are now required to be filed by all water and sewer companies as part of the contiguous extension notification or franchise application. However, the requirement at issue here only requires the filing of the contract, not an entire application or notification within 30 days. Also, as a separate matter, under the Commission's current rules and regulations, a contiguous extension notification should be filed, and a bond posted, before the Company begins serving customers in the contiguous extension. Additionally, before the Company serves customers in a new service area, the Company should have applied for and received approval from the Commission for a certificate of public convenience and necessity in the new service area.

CWS is still not complying with the Commission's rules and regulations. The evidence presented during the hearing on this matter reveals that CWS is currently serving customers in contiguous extensions without having first posted a bond, and is serving customers in a new service area without first receiving a certificate of public convenience and necessity. Specifically, the Company began serving customers in the contiguous extensions in Reedy Creek Run in February 2003, Brookdale in July 2004, and Julian Meadows in May 2004. The Company also began serving customers, and charging rates, in the Larkhaven subdivision in February 2004. The Company has an application for a certificate of public convenience and necessity for Larkhaven pending before the Commission, but the Company failed to file a complete application, and, as a result, the Public Staff and Commission have been unable to process this filing.

In defense of the foregoing evidence, witness Lubertozi testified that the Company has put into place procedures to ensure accuracy and completeness of filings before the Commission. The Commission concludes that these procedures are not working, since the Company still has not filed all the outstanding exhibits and information for the pending cases where it is serving customers. Upon review of the Commission's files and records the Company has still not filed plan approval letters from the Department of Environment and Natural Resources (DENR), or other outstanding exhibits for the Larkhaven franchise, even though it is serving customers in that system.

Based upon the foregoing, the Commission is of the opinion that the requirement to file contracts within 30 days of signing should not be lifted until the Company has clearly shown that it has implemented procedures to ensure that it is complying with the rules concerning contiguous extensions and franchises, that those procedures are working, and that the Company is in compliance with Commission rules and regulations. Therefore, the Commission concludes that the Company should evaluate its current practices and prepare a new procedure that ensures that the Company will comply with the rules and regulations of the Commission, in particular the rules concerning contiguous extensions and franchises. The Company should file its procedure with the Commission within 60 days of the effective date of this Order. Finally, the Commission concludes that the Company should continue to file all contracts or agreements with developers in both existing and new service areas within 30 days from signing. These contracts or agreements should be filed with the Chief Clerk of the Commission. If any agreements are reached with developers regarding the provision of service but are not written or signed prior to being acted on, the Company should file with the Commission a detailed written description of the terms of the agreement within 30 days of entering into the agreement. The Commission will consider granting relief from this requirement upon approval of the procedures the Company has been required to file as described above.

#### EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 108

The evidence supporting this finding of fact is found in the testimony of Public Staff witness Fernald and Company witnesses Lubertozi and Weeks. Public Staff witness Fernald recommended that the Commission consider whether the Company's persistent failure to meet its legal obligations warrants penalties. The Commission's orders in Docket No. W-354, Subs 111 and 118, which were issued in 1992 and 1994, respectively, required that the Company file contracts or agreements with developers within 30 days of the signing of the agreements. The Public Staff has confirmed that CWS has not complied with this filing requirement, and has failed to file certain contracts for approval, and for the contracts that it has filed, the Company has failed to file them within the required 30 days.

<u>System</u>	<u>Date of Agreement/Letter</u>
Southwoods/Brandywine	11/09/93
Windward Cove	11/18/93
Mt. Carmel – Harmony	12/08/93
Hemby – Tyson Construction	02/29/96
Mt. Carmel – Huber Construction	07/12/96
Lamplighter South – Marshall	03/29/00
Bent Tree Sewer Operations	05/22/02
Mountainside at Wolf Laurel	06/10/03

The Public Staff has confirmed that CWS has not filed the above identified contracts which it has entered into with developers within the 30 days as required by the Commission. The Public Staff has learned that CWS is also serving customers in contiguous extensions without first posting a bond. Specifically, the Company began serving customers in the contiguous extensions in Reedy Creek Run in February 2003, Brookdale in July 2004, and Julian Meadows in May 2004. CWS also began serving customers, and charging rates, in the Larkhaven subdivision in February 2004.

According to the Public Staff, CWS has a history of noncompliance over many years, much of which remains uncorrected despite the Commission's instruction and warnings. The Public Staff argues that there are a significant number of detailed examples of the CWS's failure to comply with North Carolina law and the Commission's rules and regulations. The Public Staff believes this conduct should not be ignored.

CWS claims its omission to file the agreements was not intentional. CWS argues that there is compliance with the Commission's rules and regulations. CWS points out that no other company is required to file contracts within 30 days of execution and that current Commission rules prevent service to customers before the contracts are addressed by the Commission. CWS has recently put procedures in place to ensure that all contracts are filed on a timely basis. Under these procedures, all executed contracts in North Carolina have a routing sheet to ensure that the employee responsible for filing the contract receives a copy. CWS argues that its inaction does not rise to the level where the Commission should impose a fine or penalty. Moreover, CWS suggests that the imposition of a fine does not recognize the procedures that the Company has put in place to ensure that all contracts are filed with the Commission on a timely basis.

Based on the foregoing, the Commission agrees with CWS. The Commission does not take lightly CWS's failure to file its agreements and notices serving contiguous areas. However, the Commission views CWS's omission to comply with North Carolina law and the Commission's rules and regulations as unintentional. Without the necessary intent to defy the law and Commission's rules and regulations, the Commission is hesitant to levy any fine upon CWS.

IT IS, THEREFORE, ORDERED as follows:

1. That the Company is hereby granted an increase in its water service revenues of \$1,263,253 and sewer service revenues of \$911,361.
2. That the Schedule of Rates, attached hereto as Appendix A, is approved for water and sewer utility service rendered by CWS on and after the date of this Order. This schedule is deemed filed with the Commission pursuant to G.S. 62-138.
3. That the Company should carefully review the connection charges and plant modification fees set forth in Appendix A and file any comments or proposed corrections within 30 days.
4. That a copy of the Notice to Customers, attached hereto as Appendix B, shall be mailed or hand delivered to all customers along with the next billing.
5. That the Company shall charge the authorized uniform connection charge and plant modification fee in all of its service areas, whether existing or new, unless it receives prior Commission approval to deviate from the uniform fees.
6. That the Company shall file any contracts with developers not previously filed with the Commission within 90 days of the effective date of this Order.
7. That the Company shall continue to file all contracts or agreements with developers in both existing and new service areas within 30 days from signing. These contracts or agreements shall be filed with the Chief Clerk of the Commission. If any agreements are reached with developers regarding the provision of service but are not written or signed prior to being acted on, the Company shall file with the Commission a detailed written description of the terms of the agreement within 30 days of entering into the agreement.
8. That the Company shall evaluate its current practices and prepare a new procedure that ensures that the Company will comply with the rules and regulations of the Commission, in particular the rules concerning contiguous extensions and franchises. The Company shall file its procedure with the Commission within 60 days of the effective date of this Order.
9. That the Company shall immediately cease collecting gross-up as required by the Commission's order issued on August 27, 1996, in Docket No. M-100, Sub 113.
10. That the Company shall immediately begin charging its authorized connection fees in Bradford Park.

11. That the Company shall, within 60 days of the effective date of this Order, file a plan to refund the gross-up collected in the Cambridge, Windsor Chase water system, Southwoods sewer system, Lamplighter Village South, Winghurst and Bradford Park to the current property owners with 10% interest compounded annually.

12. That the Company shall file a plan to refund the overcollection of management fees in the Turtle Rock and Strathmoor systems to the current property owners, with 10% interest compounded annually, within 60 days of the effective date of this Order.

13. That the Company shall immediately begin recording management fees, payments for main extensions or to offset plant costs, and reservation of capacity fees as CIAC on its books.

14. That the Company shall make entries on its books to reflect the amount of CIAC found reasonable in this case.

15. That the Company shall complete its evaluation of how separate subaccounts for each type of CIAC could be established, and a recording mechanism to ensure accuracy, and file a report on its findings and recommendations with the Commission within 90 days of the effective date of this Order.

16. That the Company shall make an entry on its books at year-end to reflect the actual amount of depreciation expense and amortization of CIAC for the year. The Company shall file with the Commission within 90 days of this Order a report detailing the changes the Company will make to its calculation of depreciation expense and amortization of CIAC.

17. That the Company shall immediately begin recording revenues from antenna space rentals in Account 472 - Rents from Water Property

18. That the Company shall evaluate how to recognize the receipt of plant modification fees in its AFUDC calculation and file its revised policy within 90 days of the effective date of this Order.

19. That the Company shall file the contract covering the affiliated transactions between Bio-Tech and CWS, including sludge hauling and other services, within 30 days of the effective date of this Order.

20. That Utilities, Inc. shall also file contracts covering the affiliated transactions between Bio-Tech and the North Carolina regulated companies other than CWS, as initially required in Docket No. W-1012, Sub 5, within 30 days of the effective date of this Order. The contract for each regulated company shall be filed under the applicable docket number for that company.

21. That the Company shall be responsible for installing all meters, and should no longer accept meters from developers. When meters are installed, the Company is authorized to charge a meter fee of \$50 for 5/8 or 3/4 inch meters, and actual cost for meters greater than 5/8 or 3/4 inch, for all metered water connections.

22. The metering of unmetered water systems shall be accomplished as follows:

- a. CWS shall solicit preliminary estimates from contractors, to be used as a basis for determining the approximate cost of installing meters;
- b. This information shall be provided to each homeowners association in the unmetered areas within 90 days of the effective date of this Order;
- c. If the homeowners association requests that meters be installed, CWS shall solicit bids within 60 days of the response from the homeowners association;
- d. The homeowners association shall be allowed to review the final bid amount;
- e. If the homeowners association approves the project based on the final bid amount, CWS shall award the contract within 30 days of final approval from the homeowners association and request approval from the Commission for an assessment to recover the cost; and

23. That CWS shall file with the Commission a status report regarding their progress on metering systems every six months after the effective date of this Order.

ISSUED BY ORDER OF THE COMMISSION.

This the 15<sup>th</sup> day of April, 2005.

NORTH CAROLINA UTILITIES COMMISSION

*Gail L. Mount*

Gail L. Mount, Deputy Clerk

dh041505.02

SCHEDULE OF RATES

for

CAROLINA WATER SERVICE, INC. OF NORTH CAROLINA

for providing water and sewer utility service in

ALL ITS SERVICE AREAS IN NORTH CAROLINA

**WATER RATES AND CHARGES**

METERED SERVICE:

**BASE FACILITIES CHARGES**

A. Residential Single Family Residence	\$ 11.90
B. Where Service is Provided Through a Master Meter and Each Dwelling Unit is Billed Individually	\$ 11.90
C. Where Service is Provided Through a Master Meter and a Single Bill is Rendered for the Master Meter (As in a Condominium Complex)	\$ 10.90
D. Commercial and Other (Based on Meter Size): 5/8" x 3/4" meter	\$ 11.90
1" meter	\$ 29.75
1-1/2" meter	\$ 59.50
2" meter	\$ 95.20
3" meter	\$178.50
4" meter	\$297.50
6" meter	\$595.00

USAGE CHARGE:

A. Treated Water/1,000 gallons	\$ 3.60
B. Untreated Water/1,000 gallons (Brandywine Bay Irrigation Water)	\$ 2.40

FLAT RATE SERVICE:

A. Single Family Residential	\$ 25.60
B. Commercial per single family equivalent (SFE)	\$ 25.60

AVAILABILITY RATES (semi annual):

Applicable only to property owners in Carolina Forest and Woodrun Subdivision in Montgomery County	\$ 14.40
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<u>METER TESTING FEE</u> <sup>1/</sup> :	\$ 20.00
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<u>NEW WATER CUSTOMER CHARGE:</u>	\$ 27.00
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RECONNECTION CHARGES <sup>2/</sup>:

If water service is cut off by utility for good cause:	\$ 27.00
If water service is disconnected at customer's request:	\$ 27.00

MANAGEMENT FEE (in the following subdivisions only) :

Cambridge	\$250.00
Southwoods/Brandywine at Mint Hill	\$300.00
Windsor Chase	\$ 63.00
Wolf Laurel	\$150.00

OVERSIZING FEE (in the following subdivision only) :

Winghurst	\$400.00
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METER FEE:

For 5/8 or 3/4 inch meters	\$ 50.00
For meters greater than 5/8 or 3/4 inch	Actual Cost

UNIFORM CONNECTION FEES<sup>3/</sup>:

The following uniform connection fees apply unless specified differently by contract approved by and on file with the North Carolina Utilities Commission.

Connection Charge (CC), per SFE	\$100.00
Plant Modification Fee (PMF), per SFE	\$400.00

The systems where connection fees other than the uniform fees have been approved by the North Carolina Utilities Commission are as follows:

<u>Subdivision</u>	<u>CC</u>	<u>PMF</u>
Abington	\$ 0.00	\$ 0.00
Abington, Phase 14	\$ 0.00	\$ 0.00
Bent Creek	\$ 0.00	\$ 0.00
Blue Mountain at Wolf Laurel	\$ 925.00	\$ 0.00
Britley	\$ 0.00	\$ 0.00
Buffalo Creek, Phase I, II, III IV	\$ 825.00	\$ 0.00
Cambridge	\$ 382.00	\$ 0.00
Carolina Forest	\$ 0.00	\$ 0.00
Chapel Hills	\$ 150.00	\$400.00
Corolla Light	\$ 500.00	\$ 0.00
Eagle Crossing	\$ 0.00	\$ 0.00
Emerald Pointe/Rock Island	\$ 0.00	\$ 0.00
Forest Brook/Ole Lamp Place	\$ 0.00	\$ 0.00
Harbour	\$ 75.00	\$ 0.00
Hestron Park	\$ 0.00	\$ 0.00
Hound Ears	\$ 300.00	\$ 0.00
Kings Grant/Willow Run	\$ 0.00	\$ 0.00
Lemmond Acres	\$ 0.00	\$ 0.00
Monteray Shores	\$ 500.00	\$ 0.00

<u>Subdivision</u>	<u>CC</u>	<u>PMF</u>
Monteray Shores (Degabrielle Bldrs.)	\$ 0.00	\$ 0.00
Monterray 372 - do Tap fee No. 11 item 8 →	\$ 0.00	\$ 0.00
Quail Ridge	\$ 750.00	\$ 0.00
Queens Harbour/Yachtsman	\$ 0.00	\$ 0.00
Riverpointe	\$ 300.00	\$ 0.00
Riverpointe (Simonini Bldrs.)	\$ 0.00	\$ 0.00
Riverwood, Phase 6E (Johnston County)	\$ 825.00	\$ 0.00
Saddlewood/Oak Hollow (Summey Bldrs.)	\$ 0.00	\$ 0.00
Sherwood Forest	\$ 950.00	\$ 0.00
Ski Country	\$ 100.00	\$ 0.00
Southwoods/Brandywine at Mint Hill	\$ 0.00	\$ 0.00
Stonehedge (Bradford Park)	\$ 441.00	\$ 0.00
Victoria Park	\$ 344.00	\$ 0.00
White Oak Plantation	\$ 0.00	\$ 0.00
Wildlife Bay	\$ 870.00	\$ 0.00
Williams Crossing	\$ 0.00	\$ 0.00
Willowbrook	\$ 0.00	\$ 0.00
Winston Plantation	\$1,100.00	\$ 0.00
Winston Pointe, Phase 1A	\$ 500.00	\$ 0.00
Wolf Laurel	\$ 925.00	\$ 0.00
Woodrun	\$ 0.00	\$ 0.00
Woodside Falls	\$ 500.00	\$ 0.00

**SEWER RATES AND CHARGES**

**METERED SERVICE:** Commercial and Other

<b>A. Base Facility Charge (Based on Meter Size)</b>	
5/8" x 3/4" meter	\$ 11.70
1" meter	\$ 29.25
1-1/2" meter	\$ 58.50
2" meter	\$ 93.60
3" meter	\$ 175.50
4" meter	\$ 292.50
6" meter	\$ 585.00
<b>B. Usage Charge/1,000 gallons (based on metered water usage)</b>	
	\$ 5.30
<b>C. Minimum Monthly Charge</b>	
	\$ 35.50
<b>D. Sewer customers who do not receive water service from the Company/SFE</b>	
	\$ 35.50

**FLAT RATE SERVICE:** Per Dwelling Unit <sup>4/</sup> \$ 35.50

**COLLECTION SERVICE ONLY** <sup>5/</sup>: (When sewage is collected by utility and transferred to another entity for treatment)

A. Single Family Residence	\$ 12.75
B. Commercial/SFE	\$ 12.75

**MT CARMEL SUBDIVISION SERVICE AREA** (based on metered water usage)

Monthly Base Facility Charge	\$ 4.69
Usage Charge, per 1,000 gallons	\$ 4.08

**REGALWOOD AND WHITE OAK ESTATES SUBDIVISION SERVICE AREA**

Monthly Flat Rate Sewer Service

Residential Service	\$ 35.50
White Oak High School	\$1,118.00
Child Castle Daycare	\$ 143.00
Pantry	\$ 78.00

**NEW SEWER CUSTOMER CHARGE** <sup>6/</sup>: \$ 22.00

## MISCELLANEOUS UTILITY MATTERS

<u>BILLS DUE:</u>	On billing date
<u>BILLS PAST DUE:</u>	21 days after billing date
<u>BILLING FREQUENCY:</u>	Bills shall be rendered monthly in all service areas, except for Mt. Carmel which will be billed bi-monthly, and the availability charges in Carolina Forest and Woodrun Subdivisions which will be billed semi-annually.
<u>FINANCE CHARGE FOR LATE PAYMENT:</u>	1% per month will be applied to the unpaid balance of all bills still past due 25 days after billing date.
<u>CHARGES FOR PROCESSING NSF CHECKS:</u>	\$15.00

### NOTES:

- <sup>1/</sup> If a customer requests a test of a water meter more frequently than once in a 24-month period, the Company will collect a \$20 service charge to defray the cost of the test. If the meter is found to register in excess of the prescribed accuracy limits, the meter test charge will be waived. If the meter is found to register accurately or below such prescribed accuracy limits, the charge shall be retained by the Company. Regardless of the test results, customers may request a meter test once in a 24-month period without charge.
- <sup>2/</sup> Customers who request to be reconnected within nine months of disconnection at the same address shall be charged the base facility charge for the service period they were disconnected.
- <sup>3/</sup> These fees are only applicable one time, when the unit is initially connected to the system.
- <sup>4/</sup> Dwelling unit shall exclude any unit which has not been sold, rented, or otherwise conveyed by the developer or contractor building the unit.

- 5/ The utility shall charge for sewage treatment service provided by the other entity; the rate charged by the other entity will be billed to CWS' affected customers on a pro rata basis, without markup.
- 6/ These charges shall be waived if sewer customer is also a water customer within the same service area.
- 7/ The utility shall itemize the estimated cost of disconnecting and reconnecting service and shall furnish this estimate to customer with cut-off notice. This charge will be waived if customer also receives water service from Carolina Water Service within the same service area.

STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

NOTICE TO CUSTOMERS  
DOCKET NO. W-354, SUB 266  
BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Notice is given that the North Carolina Utilities Commission has granted Carolina Water Service, Inc. of North Carolina (Applicant), an increase in its water and sewer rates in all of its service areas in North Carolina. The rates approved by the Commission are as follows and are effective for service rendered on and after the date of this Notice.

WATER RATES AND CHARGES

METERED SERVICE:

BASE FACILITIES CHARGES

A. Residential Single Family Residence	\$ 11.90
B. Where Service is Provided Through a Master Meter and Each Dwelling Unit is Billed Individually	\$ 11.90
C. Where Service is Provided Through a Master Meter and a Single Bill is Rendered for the Master Meter (As in a Condominium Complex)	\$ 10.90
D. Commercial and Other (Based on Meter Size): 5/8" x 3/4" meter	\$ 11.90
1" meter	\$ 29.75
1-1/2" meter	\$ 59.50
2" meter	\$ 95.20
3" meter	\$178.50
4" meter	\$297.50
6" meter	\$595.00

USAGE CHARGE:

A. Treated Water/1,000 gallons	\$ 3.60
B. Untreated Water/1,000 gallons (Brandywine Bay Irrigation Water)	\$ 2.40

FLAT RATE SERVICE:

A. Single Family Residential	\$ 25.60
B. Commercial per single family equivalent (SFE)	\$ 25.60

AVAILABILITY RATES (semi annual):

Applicable only to property owners in Carolina Forest and Woodrun Subdivision in Montgomery County	\$ 14.40
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<u>METER TESTING FEE</u> <sup>1/</sup> :	\$ 20.00
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<u>NEW WATER CUSTOMER CHARGE:</u>	\$ 27.00
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RECONNECTION CHARGES <sup>2/</sup>:

If water service is cut off by utility for good cause:	\$ 27.00
If water service is disconnected at customer's request:	\$ 27.00

**SEWER RATES AND CHARGES**

METERED SERVICE: Commercial and Other

A. Base Facility Charge (Based on Meter Size)	
5/8" x 3/4" meter	\$ 11.70
1" meter	\$ 29.25
1-1/2" meter	\$ 58.50
2" meter	\$ 93.60
3" meter	\$ 175.50
4" meter	\$ 292.50
6" meter	\$ 585.00
B. Usage Charge/1,000 gallons (based on metered water usage)	\$ 5.30
C. Minimum Monthly Charge	\$ 35.50

D. Sewer customers who do not receive water service from the Company/SFE \$ 35.50

FLAT RATE SERVICE: Per Dwelling Unit <sup>4/</sup> \$ 35.50

COLLECTION SERVICE ONLY <sup>5/</sup>: (When sewage is collected by utility and transferred to another entity for treatment)

A. Single Family Residence \$ 12.75

B. Commercial/SFE \$ 12.75

MT CARMEL SUBDIVISION SERVICE AREA (based on metered water usage)

Monthly Base Facility Charge \$ 4.69

Usage Charge, per 1,000 gallons \$ 4.08

REGALWOOD AND WHITE OAK ESTATES SUBDIVISION SERVICE AREA

Monthly Flat Rate Sewer Service

Residential Service \$ 35.50

White Oak High School \$1,118.00

Child Castle Daycare \$ 143.00

Pantry \$ 78.00

NEW SEWER CUSTOMER CHARGE <sup>6/</sup>: \$ 22.00

RECONNECTION CHARGE <sup>7/</sup>:

If sewer service is cut off by utility for good cause: Actual Cost

ISSUED BY ORDER OF THE COMMISSION.

This the 15<sup>th</sup> day of April, 2005.

NORTH CAROLINA UTILITIES COMMISSION

*Gail L. Mount*

Gail L. Mount, Deputy Clerk