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**DAMON R. TALLEY**

**ATTORNEY AT LAW**

April 26, 2006

Ms. Beth O'Donnell  
Executive Director  
Public Service Commission  
PO Box 615  
Frankfort, KY 40602

RECEIVED

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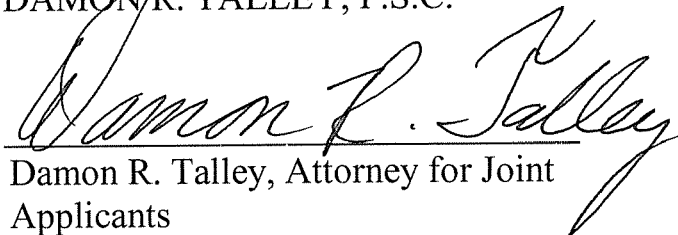
PUBLIC SERVICE  
COMMISSION

RE: Case No. 2005-00433  
Transfer Application  
Proposed Transfer of Stock from  
Nuon Global Solutions USA BV  
to Hydro Star, LLC

Dear Ms. O'Donnell:

Enclosed for filing are the original and eight (8) copies of the Notice of Filing of North Carolina Regulatory Approval

Yours truly,  
DAMON R. TALLEY, P.S.C.

  
Damon R. Talley, Attorney for Joint  
Applicants

DRT:ms

Enclosures

cc: David Spenard, Attorney General's Office

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

THE JOINT APPLICATION OF )  
NUON GLOBAL SOLUTIONS USA, BV, )  
NUON GLOBAL SOLUTIONS USA, INC., )  
AIG HIGHSTAR CAPITAL II, LP, )  
HYDRO STAR, LLC, UTILITIES, INC. )  
AND WATER SERVICE CORPORATION )  
OF KENTUCKY FOR APPROVAL OF AN )  
INDIRECT CHANGE IN CONTROL OF A )  
CERTAIN KENTUCKY UTILITY PURSUANT )  
TO THE PROVISIONS OF KRS 278.020 (5) )  
AND (6) AND 807 KAR 5:001 (8) )

CASE No. 2005-00433

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NOTICE OF FILING

OF

NORTH CAROLINA REGULATORY APPROVAL

\*\*\* \*\*

Come the Joint Applicants, Nuon Global Solutions USA, B.V. (“Nuon BV”), Nuon Global Solutions USA, Inc. (“Nuon USA”), AIG Highstar Capital II LP (“Highstar”), Hydro Star, LLC (“Hydro Star”), Utilities, Inc. (“Utilities”) and Water Service Corporation Of Kentucky (“Water Service”), (the “Joint Applicants”), by counsel, and give notice that they are filing with the Commission the following regulatory approval:

1. Attached is the regulatory approval Order from the North Carolina Utilities Commission dated April 3, 2006.

2. All regulatory approval orders from other jurisdictions have now been filed with the Commission.

Respectfully submitted this 26<sup>th</sup> day of April, 2006.

**DAMON R. TALLEY, P.S.C.**

BY:

  
**DAMON R. TALLEY**

**DAMON R. TALLEY, P.S.C.  
COUNSEL FOR NUON BV, NUON USA,  
HIGHSTAR, HYDRO STAR,  
UTILITIES, INC. AND WATER  
SERVICE**

**CERTIFICATE OF SERVICE**

This is to certify that a true copy of the foregoing pleading was served by first class U.S. Mail, postage prepaid, this 26<sup>th</sup> day of April, 2006 to the following:

Honorable David E. Spenard  
Assistant Attorney General  
1024 Capital Center Drive, Suite 200  
Frankfort, KY 40601-8204

  
**DAMON R. TALLEY**

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. W-1000, SUB 11

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Hydro Star, LLC to Acquire the Outstanding Stock of Utilities, Inc.	) ) )	ORDER APPROVING ACQUISITION OF STOCK AND REQUIRING CUSTOMER NOTICE
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**HEARD IN:** Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on February 21, 2006 at 10:30 a.m.

**BEFORE:** Commissioner Lorinzo L. Joyner, Presiding, and Commissioners Sam J. Ervin IV and William T. Culpepper III

**APPEARANCES:**

For Utilities, Inc. and Hydro Star, LLC:

Edward S. Finley, Jr., Hunton & Williams, Post Office Box 109,  
Raleigh, North Carolina 27602

For the Town of North Topsail Beach, Herschell E. Godwin, Jr., and the Saint Moritz Homeowners Association:

M. Gray Styers, Jr., Blanchard, Jenkins, Miller, Lewis & Styers,  
P.A., 1117 Hillsborough Street, Raleigh, North Carolina 27603

For the Using and Consuming Public

William Grantmyre and Ralph Daigneault, Staff Attorneys, Public  
Staff-North Carolina Utilities Commission, 4326 Mail Service  
Center, Raleigh, North Carolina 27699-4326

**BY THE COMMISSION:** On August 18, 2005, Utilities Inc., which includes all of its subsidiaries, and Hydro Star, LLC ("Hydro Star"), (collectively, "Applicants"), filed an application seeking Commission approval of the acquisition of the stock of Utilities, Inc., from Nuon Global Solutions USA, BV, pursuant to N.C. Gen. Stat. § 62-111, in accordance with the Stock Purchase Agreement filed as a confidential exhibit to the application.

Beginning September 12, 2005, the Public Staff served extensive data requests on the Applicants to determine whether the proposed stock transfer would be justified by the public convenience and necessity.

By order issued October 12, 2005, the Commission required public notice of the application and indicated that the matter could be determined without public hearing if no significant protests were received.

On November 28, 2005, the St. Moritz Homeowners Association and Herschell E. Godwin, Jr. filed a Petition to Intervene. On December 7, 2005, Applicants filed a response to this petition to intervene.

On December 9, 2005, the Town of North Topsail Beach filed a Petition to Intervene. On December 20, 2005, the North Topsail Intervenors filed a reply to Applicants' December 7, 2005 response.

On January 12, 2006, the Commission granted the Petitions to Intervene by the St. Moritz Homeowners Association and Herschell E. Godwin, Jr. and the Town of North Topsail Beach.

On January 18, 2006, the Commission scheduled a hearing and required customer notice.

On January 20, 2006, the Applicants pre-filed the written testimony of Aaron D. Gold, Principal for AIG Highstar Capital II GP, L.P. and Steven M. Lubertozzi, Director of Regulatory Accounting for Utilities, Inc.

On February 2, 2006, Hound Ears Club, Inc. filed a Petition to Intervene.

On February 3, 2006, Magnolia Plantation Partnership filed a Petition to Intervene.

On February 3, 2006, a stipulation was entered into between the Applicants and the Public Staff that resolved the issues between these parties.

On February 3, 2006, the Public Staff pre-filed the written direct testimony of Katherine A. Fernald, Supervisor of the Water Section of the Public Staff – Accounting Division, and Gina Y. Casselberry, a Utilities Engineer with the Public Staff – Water Division.

On February 3, 2006, the Commission granted the Petition to Intervene of Hounds Ears Club, Inc.

On February 6, 2006, Lancaster County Water and Sewer District filed a Petition to Intervene.

On February 6, 2006, the Town of North Topsail Beach pre-filed the written direct testimony of James Roderick Butler, a professional engineer, Mayor W. Rodney Knowles and Alderman Daniel Tuman.

On February 6, 2006, Herschell E. Godwin, Jr., intervenor and resident of North Topsail Beach, pre-filed direct written testimony.

On February 9, 2006, Applicants filed responses to the Magnolia Plantation Partnership and Lancaster Water and Sewer District's intervention requests.

On February 14, 2006, the Commission granted the Petitions to Intervene of Lancaster County Water and Sewer District and Magnolia Plantation Partnership.

On February 14, 2006, the Applicants pre-filed rebuttal testimony of Carl Daniel, Vice President and Regional Director of Operations for Carolina Water Service, Inc. of North Carolina, and Steven Lubertozi.

On February 21, 2006, Magnolia Plantation Partnership and Lancaster County Water and Sewer District filed notices of withdrawal of their petitions to intervene.

On February 21, 2006, Hound Ears Club informed the Commission of its withdrawal of its petition to intervene.

On February 21, 2006, a stipulation was entered into between Applicants and the Town of North Topsail Beach and the other North Topsail Intervenors resolving the issues between these parties. This stipulation was presented to the Commission for its consideration. The North Topsail Intervenors withdrew the pre-filed testimonies of James Roderick Butler, Mayor W. Rodney Knowles, Alderman Daniel Tuman and Herschell Godwin. The Applicants withdrew the rebuttal testimony of Carl Daniel and Steven Lubertozi, as this rebuttal testimony only addressed issues relating to North Topsail.

The matter came on for public hearing on February 21, 2006. Aaron Gold and Steven Lubertozi testified on behalf of the Applicants in support of the application. Katherine Fernald and Gina Casselberry testified on behalf of the Public Staff and in support of the joint stipulation. Also testifying as public witnesses were: Hugh McCain and Robert Wemyss from Monterey Shores, Vincent Roy and Stewart L. Aiken from Carolina Trace, James Alexy from Corolla Light, Frank Rutherford from Fairfield Mountains and Charles Lubrecht from Carolina Pines.

The stipulation submitted by the Applicants and the Public Staff settled the issues between them and requested that the transfer of the outstanding stock be approved immediately, subject to the following provisions and conditions:

1. All records of Utilities, Inc. will be physically available as required by North Carolina law.

2. Hydro Star will comply with any Commission requirement that Utilities, Inc. personnel familiar with the company records be reasonably available in North Carolina.

3. The Applicants will not seek recovery of losses or subsidization of non-utility subsidiaries of Hydro Star or Utilities, Inc. from North Carolina customers.

4. The officers and management of Utilities, Inc. will have reasonable authority to commit Utilities, Inc., and its North Carolina regulated subsidiaries, on matters considered jurisdictional to the Commission.

5. The Applicants will seek Commission permission before a corporate restructuring of Utilities, Inc.

6. No franchise of Utilities, Inc., or any of its North Carolina regulated subsidiaries, now existing or hereafter issued by the Commission under the provisions of the Public Utilities Act of North Carolina, shall be sold, assigned, pledged or transferred, nor shall control thereof be changed through stock transfer or otherwise, or any rights thereunder leased, nor shall any merger or combination, including Hydro Star and/or Utilities, Inc., affecting Utilities, Inc. and/or any of its North Carolina regulated subsidiaries, be made through acquisition of control by stock purchase or otherwise, except after application to and written approval by the Commission.

7. Hydro Star and Utilities, Inc. agree to be bound by North Carolina law and Commission Orders and rules and regulations as they relate to Utilities, Inc.'s North Carolina regulated subsidiaries.

8. All costs of the acquisition incurred by Hydro Star and/or Utilities, Inc., including compensation costs, and all direct and indirect corporate cost increases for Utilities, Inc. or any of its subsidiaries will be recorded to account number 426 (Miscellaneous Non Utility Expense) and shall be treated for accounting and ratemaking purposes so that they do not affect the water and sewer rates and charges of Utilities, Inc.'s subsidiaries. For purposes of this agreement, the term "corporate cost increases" is defined as costs in excess of the level that Utilities, Inc. would have incurred using prudent business judgment had the acquisition not occurred.

9. All costs of the 2002 merger approved by the Commission in Docket No. W-1000, Sub 9, incurred by nv Nuon and/or Utilities, Inc., including compensation costs, and all direct and indirect corporate cost increases for Utilities, Inc. or any of its subsidiaries will be recorded to account number 426 (Miscellaneous Non Utility Expense) and shall be treated for accounting and ratemaking purposes so that they do not affect the water and sewer rates and charges of Utilities, Inc.'s subsidiaries. For purposes of this agreement, the term "corporate cost increases" is defined as costs in excess of the level that Utilities, Inc., would have incurred using prudent business judgment had the merger not occurred.

10. Future payments to officers for annual bonuses, incentive bonuses, long term incentive bonuses, and any other bonuses made in relation to the acquisition will be excluded from Utilities, Inc.'s utility accounts and shall be treated for accounting and ratemaking purposes so that they do not affect the water and sewer rates and charges of Utilities, Inc.'s subsidiaries.

11. Base salaries, compensation payments, annual bonuses, incentive bonuses, long term incentive bonuses, any other bonuses, and any incentive compensation other than those listed in Item 10 above shall be subject to review and ratemaking adjustment in future rate proceedings for Utilities, Inc., where Utilities, Inc. holds a Commission-issued certificate, and for its North Carolina regulated subsidiaries (including areas included within the certificate of such subsidiaries through operation of G.S. 62-110(a)). The burden of proof on each of these issues shall be upon Utilities, Inc., and its North Carolina regulated subsidiaries.

12. Any acquisition adjustment that results from the acquisition will be excluded from Utilities, Inc.'s utility accounts and treated for accounting and ratemaking purposes so that it does not affect water and sewer rates and charges of Utilities, Inc.'s subsidiaries.

13. Utilities, Inc. and each of its North Carolina regulated subsidiaries shall maintain its books and records so that its equity capital is recorded pursuant to the respective NARUC Uniform System of Accounts for Class A Water and Class A Wastewater Utilities, as revised in 1996, and all subsequent revisions.

14. Applicants shall provide Utilities, Inc., to the extent it holds certificates issued by the Commission, and its North Carolina regulated subsidiaries with sufficient access to equity and debt capital to enable Utilities, Inc. and its North Carolina regulated subsidiaries to adequately fund and maintain their current and future water and wastewater systems, and otherwise meet the service needs of their customers at a reasonable cost. The timing and quantity of any capital expenditures or discrete capital infusion shall be determined by the Applicants' best judgment consistent with the requirement to maintain the current and future water and wastewater systems and otherwise meet the service needs of the customers at a reasonable cost.

15. The Applicants agree to file all proposed amendments, updates, and new contracts pertaining to affiliated transactions with the Commission and get approval for the North Carolina operating subsidiary to pay compensation to an affiliate in advance of effectiveness as required under North Carolina General Statute 62-153.

16. The Applicants and all affiliates shall take all such actions as may be reasonably necessary and appropriate to hold North Carolina ratepayers harmless from rate increases, foregone opportunities for rate decreases and/or any other adverse effects of the transfer.



17. The books and records of Hydro Star and any other affiliated companies will be made available for inspection as required under North Carolina General Statute 62-51.

18. Utilities, Inc.'s North Carolina operating subsidiaries and Utilities, Inc., where it holds certificates from the Commission, shall comply with the requirements of G.S. 62-153 with respect to the procurement of goods or services from Hydro Star or other affiliated or subsidiary companies or entities. Whenever Utilities, Inc.'s North Carolina operating subsidiaries and Utilities, Inc., where it holds certificates from the Commission, seek to recover through rates the costs of goods or services procured from Hydro Star or other affiliated or subsidiary companies or entities, or whenever the Commission requires it, Utilities, Inc., shall have the burden of persuasion and proof as to the reasonableness of such costs in accordance with North Carolina law.

19. Utilities, Inc.'s operations in North Carolina are generally in compliance with applicable environmental regulations. In cases where Utilities Inc.'s affiliates are involved in environmental compliance issues, Utilities, Inc. and Hydro Star agree to continue to cooperate with all regulatory agencies in addressing any outstanding compliance issues, to the satisfaction of the environmental regulatory agencies and the Public Staff.

20. Utilities, Inc., through the appropriate operating subsidiary, shall use its best reasonable efforts to resolve the customer service complaints filed in the Commission's official file in this docket as of the close of the hearing or presented at the hearing from Corolla Light/Monteray Shores consumers in regard to water supply and chloride and trihalomethane levels. Utilities, Inc. shall file monthly progress reports with the Commission addressing water supply and chloride and elevated trihalomethane levels until such time that the Commission orders that filing the reports is no longer necessary. The first report shall be filed within 30 days from the date Applicants provide the Commission notice of the closing of the acquisition.

21. Utilities, Inc., through the appropriate operating subsidiary, shall use its best reasonable efforts to address the wastewater capacity and expansion complaints filed in the Commission's official file in this docket as of the close of the hearing or presented at the hearing from North Topsail Beach consumers. Utilities, Inc. shall file with the Commission monthly progress reports addressing wastewater capacity and expansion until such time that the Commission orders that filing the reports is no longer necessary. The first report shall be filed within 30 days of the date Applicants provide the Commission notice of the closing of the acquisition.

22. Utilities, Inc., through the appropriate operating subsidiary, agrees to continue to be responsive to customer inquiries regarding the adequacy of service, billing issues, and compliance issues, and to maintain customer access to compliance, billing, and other operational information.

23. Utilities, Inc., through the appropriate operating subsidiary, will continue to take steps designed to implement and further its commitment to provide superior service to North Carolina water and sewer customers.

The stipulation submitted by the Applicants and the North Topsail Intervenors settled the issues between them and requested that the transfer of the outstanding stock be approved immediately, subject to the following provisions and conditions:

1. Utilities Inc. and North Topsail Utilities, Inc. ("NTUI") have devised a three-phase plan to address capital improvements, capacity (measured in connections) and service issues for the system.

2. Phase I consisted of the restoration of the capacity to the system. Prior to Utilities Inc.'s purchase of the North Topsail sewer system, the North Carolina Division of Water Quality ("DWQ") reduced capacity available for construction of buildings from 877,000 gpd to 629,000 gpd.

3. Over the last six years, NTUI has conducted in-flow and infiltration studies, soil application rate studies, force main hydraulic studies and constructed additional facilities (at a cost of approximately \$1.5 million) in its attempt to overcome the regulatory reductions in capacity.

NTUI has successfully restored the plant to its full capacity.

4. Phase II involves the current expansion of the plant. NTUI is in the process of expanding the plant by approximately one million gallons.

5. As of February 21, 2006, NTUI had a hydrogeologist on site. The hydrogeologist's work should be completed in approximately 30-45 days from February 21, 2006.

6. Upon completion of the hydrogeologist's work, NTUI's consulting engineer will develop plans for the expansion based on the hydrogeologist's report and will submit those plans to DWQ for approval and will request DWQ's "express review" procedure for these plans.

7. Assuming there are no permitting delays and that DWQ approves the plans in a timely manner, NTUI anticipates that construction on the plant expansion should be completed by mid-2007.

8. Phase III involves the future expansion of the plant and will follow the same process for developing additional capacity as Phase II. NTUI plans this future expansion of the plant to include an additional 1.5 million gallons. NTUI will use its best efforts to complete any additional hydrogeology work and consulting engineering plans necessary for Phase III by the end of 2007.

9. If the current real property owned by NTUI is insufficient to accommodate the Phase II and/or Phase III expansions discussed above, NTUI agrees to use such other means as necessary, reasonable, and prudent to satisfy these capacity expansion plans (including the acquisition of additional property so long as such acquisition is legally permissible and the cost is approved as reasonable and prudent by the Commission).

10. NTUI will make such other improvements or expansions to the mains as may be necessary to provide sufficient transport capacity of the waste stream from Topsail Island to the wastewater treatment facility in order to meet the demand for sewer services within the municipal corporate limits of the Town of North Topsail Beach.

11. A representative of NTUI will attend, if requested, at least quarterly meetings of the Town of North Topsail Beach Board of Alderman or a designated committee thereof to orally report on NTUI's efforts and progress consistent with the February 21, 2006, Stipulation and to answer questions about current and future sewer utility service in the Town

12. Upon receipt of telephone or e-mail notice by local NTUI personnel in Onslow County from the Mayor or Town Manager of the Town of North Topsail Beach or their designee of odor problems from the pump station near the Highway 210 bridge, NTUI will take immediate action to evaluate the problem and take such action as it deems appropriate (which may include aeration and chemical/physical deodorizers).

13. Within ninety days following the final order approving the stock transfer in this docket, fecal and total coliform tests of the surface water at the pump station near the Highway 210 bridge will be conducted, at NTUI's expense, and the complete results of the tests will be provided to the Town Manager of the Town of North Topsail Beach.

14. The Town of North Topsail Beach, St. Moritz Homeowners Association, Inc. and Herschell E. Godwin, Jr. have agreed, subject to the stipulation set forth below, to withdraw their objections and to support the immediate granting of the transfer of the outstanding stock of Utilities, Inc. to Hydro Star. In addition, the Parties hereby stipulate as follows:

(a) NTUI shall have access to sufficient equity and debt capital to enable NTUI to adequately fund the above-referenced capital improvement plan, including the permitting thereof, and otherwise to meet the service needs of the NTUI customers at a reasonable cost.

(b) All plant expansions, land, and capital expenditures referenced above must be considered reasonable and prudent by the Commission. Additionally, Utilities Inc. and/or NTUI will be allowed to recover investor-financed investments through depreciation or amortization plus earn a reasonable rate of return on the undepreciated balance through its rate structure.

(c) By utilizing the standard of 120 gallons per bedroom, the expansion of NTUI should result in the following:

- i. In Phase II, the expanded plant will have the treatment capacity of approximately 1,700,000 gpd. This translates to a system capacity of approximately 4,722 three-bedroom homes.
- ii. Upon completion of Phase III, the expanded plant will have the treatment capacity of approximately 3,370,000 gpd. This translates to a system capacity of approximately 9,360 three-bedroom homes.

(d) NTUI shall continue to use a first-come, first-served, nondiscriminatory process for allocating capacity as it becomes available.

(e) All monthly reports to the Commission to be filed pursuant to Section "(u)" (paragraph 21 above of this order) of the Stipulation Between Applicants and Public Staff dated February 3, 2006 (hereinafter "Reports") will be provided monthly to the Town Manager of the Town of North Topsail Beach.

(f) NTUI will prepare and publish formal written procedures to implement the current first-come, first-served, nondiscriminatory process for allocating capacity as it becomes available (including the process for notification to those on the list who are eligible to receive capacity when it becomes available) and will include it as soon as practicable as part of one of the Reports. Any changes in the written procedures will be disclosed in subsequent Reports.

(g) By the end of the first full month after the final order of the Commission approving the stock transfer in this docket and every three months thereafter, NTUI will provide to the North Carolina Utilities Commission Public Staff, on a confidential basis and subject to appropriate non-disclosure protections, the list of customers, in priority order, who have requested and are waiting to receive sewer service from NTUI at the end of each quarter. This confidential list will be updated quarterly and will also indicate the previously listed customers who have received their allocated capacity since the previous quarter's report. NTUI will also make available publicly the list of all persons who have received their allocation of capacity during the previous quarter.

(h) NTUI will seek permission from the Commission as soon as practicable following the final order approving the stock transfer in this docket to take reserved capacity from individuals not ready to build and allocate it to those interests that are currently ready to build. The reserved capacity taken from the first party would then be substituted with a reservation for future capacity.

(i) If, for reasons beyond its control, NTUI cannot fulfill the obligations set forth in this Stipulation, it agrees to enter into good faith discussions and to cooperate with any other entity that would be able to provide the necessary infrastructure and capacity in order to satisfy the capacity projections set forth above (such alternatives may include, but are not limited to, the wholesale purchase of available bulk capacity).

On the basis of the application, the stipulations, the records of the Commission and the evidence of record, the Commission makes the following:

### FINDINGS OF FACT

1. Utilities Inc. owns nine water and/or sewer operating subsidiaries in North Carolina subject to the Commission's jurisdiction. These are: Carolina Water Service Inc. of North Carolina; CWS Systems, Inc.; Transylvania Utilities, Inc.; Carolina Trace Utilities, Inc.; Elk River Utilities Inc.; North Topsail Utilities, Inc.; Carolina Pines Utilities, Inc.; Bradfield Farms Water Company; and Nero Utility Services, Inc. Utilities Inc. also owns the stock of Riverpointe Utility Corporation, Watauga Vista Water Corp., Belvedere Utility Company and Queens Harbor Utilities, Inc. that are separate corporations but that are treated as a part of Carolina Water Service Inc. of North Carolina for ratemaking purposes. These companies provide service to approximately 29,000 water customers and 20,000 wastewater customers in North Carolina. Utilities Inc. provides water and/or sewer service through approximately 90 operating companies in 17 states. The Utilities Inc. operating subsidiaries provide service to approximately 300,000 customers.

2. Hydro Star is a limited liability corporation duly organized and existing under the laws of the State of Delaware. Its principal office is located at 2929 Allen Parkway, Houston, Texas 77019. Hydro Star is a subsidiary of AIG Highstar Capital II, L.P. and certain of its affiliates (Highstar II). Highstar II is a group of private equity funds that invest primarily in energy infrastructure and related assets and businesses. Highstar II is sponsored by AIG Global Investment Group (AIGGIG). AIGGIG member companies are subsidiaries of American International Group, Inc. (AIG). AIGGIG comprises a group of international companies that provide investment advice and market asset management products and services to clients around the world.

3. Operating subsidiaries of Utilities Inc. serve approximately 29,000 water customers and 20,000 wastewater customers in North Carolina.

4. It is appropriate for Hydro Star to acquire the outstanding common stock of Utilities Inc. from Nuon Global Solutions, USA, BV according to the Stock Purchase Agreement submitted with the application in this docket.

5. Public witnesses expressed concerns about whether the proposed transfer would have an impact on quality of service issues. The concerns expressed by Corolla Light/Monteray Shores consumers have been addressed by the stipulation

submitted by the Applicants and the Public Staff. The concerns expressed by the Carolina Trace and Fairfield Mountain customers were not addressed by any stipulation.

6. The stock acquisition will not require any additional terms, conditions, or requirements, and there will be no adverse rate impacts on retail customers.

7. The substitution of shareholders should not have a significant direct influence on the operations of the North Carolina subsidiaries of Utilities, Inc., and the current level of service will be maintained.

8. The transfer of the stock in Utilities Inc. to Hydro Star is justified by the public convenience and necessity.

9. The stipulations between the Applicants and the Public Staff and between the Applicants and the Town of North Topsail Beach and other North Topsail Intervenor submitted in this docket should be approved.

10. NTUI has stand-alone rates for the North Topsail franchise area, which are not included in the uniform rate structure of any of Utilities, Inc.'s other North Carolina Commission regulated subsidiaries.

#### **EVIDENCE AND CONCLUSIONS ON CUSTOMER TESTIMONY**

Public witnesses Hugh McCain and Robert Wemyss from Monteray Shores, and James Alexy from Corolla Light testified as to their concerns about the water quality and supply, particularly the elevated trihalomethane levels, the level of chlorides which these customers stated makes the water undrinkable and damages plumbing fixtures, low water pressure, and what these customers believed to be diminishing well supply, particularly at Corolla Light.

Vincent Roy and Stewart L. Aiken testified on behalf of various property owners associations at Carolina Trace regarding a number of service issues. The primary issues they discussed were: the need for expansion of the wastewater treatment plant, the condition of the sewer service lines, mains, manholes which they believed resulted in periodic backups, overflows, and the need for increased inspections and remedial actions, the possible replacement of a water main on Turnbury Street which had had three water main breaks in eighteen months, the request to bore under roads when installing water service lines and the condition of the roads as a result of road cuts for the installation and repairs of the water mains and services.

John Rutherford testified on behalf of the Fairfield Mountains Property Owners Association. His primary concerns were that the Fairfield Mountains Property Owners Association should not be required to provide well lots for water system expansions outside of Fairfield Mountains, and the number of main breaks and resulting leaks.

Charles Lubrecht testified on behalf of Magnolia Plantation Partnership, a developer at Carolina Pines subdivision. He testified that Magnolia Plantation Partnership withdrew its intervention in this proceeding upon reaching a clarification agreement with Carolina Pines Utilities, Inc., a subsidiary of Utilities, Inc., as to the wastewater capacity contracted to Magnolia Plantation Partnership, as evidenced by Lubrecht Exhibit 1.

The Commission concludes that the Commission will monitor the service issues about which the customers testified through the reports to be filed by Utilities, Inc., or its respective subsidiaries, and take appropriate action as needed based on those reports.

The stipulation between the Public Staff and Utilities, Inc. and Hydro Star in paragraph 20 and ordering paragraph 1(t), of this Order requires monthly reports for Corolla Light/Monteray Shores until the Commission concludes that the filing of the reports is no longer necessary. The Commission will order that Utilities, Inc., through its appropriate subsidiary should file with the Commission within 30 days of the date of this order, comprehensive reports on the service issues raised by the customers from Carolina Trace and Fairfield Mountains as well.

## CONCLUSIONS

Based upon the foregoing, the Commission is of the opinion that the request that Hydro Star acquire the stock of Utilities Inc. is in the public interest and is approved, and that the stipulation between the Applicants and the Public Staff and between the Applicants and the Town of North Topsail Beach and other North Topsail Intervenors should be approved.

The stipulation filed February 21, 2006, between the Town of North Topsail Beach, the North Topsail Intervenors and Applicants shall be applicable only to the North Topsail franchise area, including future expansions. Stipulation paragraph 15(b)(ordering paragraph 1gg) shall remain operable only so long as NTUI retains stand-alone rates and the North Topsail franchise service area does not become part of the uniform rate structure of any of Utilities, Inc.'s other North Carolina Commission regulated subsidiaries. Stipulation paragraph 15(b) (ordering paragraph gg), shall have no precedential value for any of the service areas of Utilities, Inc.'s other North Carolina Commission regulated subsidiaries.

IT IS, THEREFORE, ORDERED as follows:

1. That the application for transfer of the stock of Utilities Inc. to Hydro Star as described herein and in the application is approved upon the following conditions, and that Utilities Inc. and Hydro Star are ordered to comply with such conditions:

(a) All records of Utilities, Inc. will be physically available as required by North Carolina law.

(b) Hydro Star will comply with any Commission requirement that Utilities, Inc. personnel familiar with the company records be reasonably available in North Carolina.

(c) The Applicants will not seek recovery of losses or subsidization of non-utility subsidiaries of Hydro Star or Utilities, Inc. from North Carolina customers.

(d) The officers and management of Utilities, Inc. will have reasonable authority to commit Utilities, Inc., and its North Carolina regulated subsidiaries, on matters considered jurisdictional to the Commission.

(e) The Applicants will seek Commission permission before a corporate restructuring of Utilities, Inc.

(f) No franchise of Utilities, Inc., or any of its North Carolina regulated subsidiaries, now existing or hereafter issued by the Commission under the provisions of the Public Utilities Act of North Carolina, shall be sold, assigned, pledged or transferred, nor shall control thereof be changed through stock transfer or otherwise, or any rights thereunder leased, nor shall any merger or combination including Hydro Star and/or Utilities, Inc. affecting Utilities, Inc. and/or any of its North Carolina regulated subsidiaries, be made through acquisition of control by stock purchase or otherwise, except after application to and written approval by the Commission.

(g) Hydro Star and Utilities, Inc. agree to be bound by North Carolina law and Commission Orders and rules and regulations as they relate to Utilities, Inc.'s North Carolina regulated subsidiaries.

(h) All costs of the acquisition incurred by Hydro Star and/or Utilities, Inc., including compensation costs, and all direct and indirect corporate cost increases for Utilities, Inc. or any of its subsidiaries will be recorded to account number 426 (Miscellaneous Non Utility Expense) and shall be treated for accounting and ratemaking purposes so that they do not affect the water and sewer rates and charges of Utilities, Inc.'s subsidiaries. For purposes of this agreement, the term "corporate cost increases" is defined as costs in excess of the level that Utilities, Inc. would have incurred using prudent business judgment had the acquisition not occurred.

(i) All costs of the 2002 merger approved by the Commission in Docket No. W-1000, Sub 9, incurred by nv Nuon and/or Utilities, Inc., including compensation costs, and all direct and indirect corporate cost increases for Utilities, Inc. or any of its subsidiaries will be recorded to account number 426 (Miscellaneous Non Utility Expense) and shall be treated for accounting and ratemaking purposes so that they do not affect



the water and sewer rates and charges of Utilities, Inc.'s subsidiaries. For purposes of this agreement, the term "corporate cost increases" is defined as costs in excess of the level that Utilities, Inc., would have incurred using prudent business judgment had the merger not occurred.

(j) Future payments to officers for annual bonuses, incentive bonuses, long term incentive bonuses, and any other bonuses made in relation to the acquisition will be excluded from Utilities, Inc.'s utility accounts and shall be treated for accounting and ratemaking purposes so that they do not affect the water and sewer rates and charges of Utilities, Inc.'s subsidiaries.

(k) Base salaries, compensation payments, annual bonuses, incentive bonuses, long term incentive bonuses, any other bonuses, and any incentive compensation other than those listed in Item (j) above shall be subject to review and ratemaking adjustment in future rate proceedings for Utilities, Inc., where Utilities, Inc. holds a Commission-issued certificate, and for its North Carolina regulated subsidiaries (including areas included within the certificate of such subsidiaries through operation of G.S. 62-110(a)). The burden of proof on each of these issues shall be upon Utilities, Inc., and its North Carolina regulated subsidiaries.

(l) Any acquisition adjustment that results from the acquisition will be excluded from Utilities, Inc.'s utility accounts and treated for accounting and ratemaking purposes so that it does not affect water and sewer rates and charges of Utilities, Inc.'s subsidiaries.

(m) Utilities, Inc. and each of its North Carolina regulated subsidiaries shall maintain its books and records so that its equity capital is recorded pursuant to the respective NARUC Uniform System of Accounts for Class A Water and Class A Wastewater Utilities, as revised in 1996, and all subsequent revisions.

(n) Applicants shall provide Utilities, Inc., to the extent it holds certificates issued by the Commission, and its North Carolina regulated subsidiaries with sufficient access to equity and debt capital to enable Utilities, Inc. and its North Carolina regulated subsidiaries to adequately fund and maintain their current and future water and wastewater systems, and otherwise meet the service needs of their customers at a reasonable cost. The timing and quantity of any capital expenditures or discrete capital infusion shall be determined by the Applicants' best judgment consistent with the requirement to maintain the current and future water and wastewater systems and otherwise meet the service needs of the customers at a reasonable cost.

(o) The Applicants agree to file all proposed amendments, updates, and new contracts pertaining to affiliated transactions with the Commission and get approval for the North Carolina operating subsidiary to pay compensation to an affiliate in advance of effectiveness as required under North Carolina General Statute 62-153.

(p) The Applicants and all affiliates shall take all such actions as may be reasonably necessary and appropriate to hold North Carolina ratepayers harmless from rate increases, foregone opportunities for rate decreases and/or any other adverse effects of the transfer.

(q) The books and records of Hydro Star and any other affiliated companies will be made available for inspection as required under North Carolina General Statute 62-51.

(r) Utilities, Inc.'s North Carolina operating subsidiaries and Utilities, Inc., where it holds certificates from the Commission, shall comply with the requirements of G.S. 62-153 with respect to the procurement of goods or services from Hydro Star or other affiliated or subsidiary companies or entities. Whenever Utilities, Inc.'s North Carolina operating subsidiaries and Utilities, Inc., where it holds certificates from the Commission, seeks to recover through rates the costs of goods or services procured from Hydro Star or other affiliated or subsidiary companies or entities, or whenever the Commission requires it, Utilities, Inc., shall have the burden of persuasion and proof as to the reasonableness of such costs in accordance with North Carolina law.

(s) Utilities, Inc.'s operations in North Carolina are generally in compliance with applicable environmental regulations. In cases where Utilities Inc.'s affiliates are involved in environmental compliance issues, Utilities, Inc. and Hydro Star agree to continue to cooperate with all regulatory agencies in addressing any outstanding compliance issues, to the satisfaction of the environmental regulatory agencies and the Public Staff.

(t) Utilities, Inc., through the appropriate operating subsidiary, shall use its best reasonable efforts to resolve the customer service complaints filed in the Commission's official file in this docket as of the close of the hearing or presented at the hearing from Corolla Light/Monteray Shores consumers in regard to water supply and chloride and trihalomethane levels. Utilities, Inc. shall file monthly progress reports with the Commission addressing water supply and chloride and elevated trihalomethane levels until such time that the Commission orders that filing the reports is no longer necessary. The first report shall be filed within 30 days from the date of this order.

(u) Utilities, Inc., through the appropriate operating subsidiary, shall use its best reasonable efforts to address the wastewater capacity and expansion complaints filed in the Commission's official file in this docket as of the close of the hearing or presented at the hearing from North Topsail Beach consumers. Utilities, Inc. shall file with the Commission monthly progress reports addressing wastewater capacity and expansion until such time that the Commission orders that filing the reports is no longer necessary. The first report shall be filed within 30 days of the date Applicants provide the Commission notice of the closing of the acquisition.

(v) Utilities, Inc., through the appropriate operating subsidiary, agrees to continue to be responsive to customer inquiries regarding the adequacy of service, billing issues, and compliance issues, and to maintain customer access to compliance, billing, and other operational information.

(w) Utilities, Inc., through the appropriate operating subsidiary, will continue to take steps designed to implement and further its commitment to provide superior service to North Carolina water and sewer customers.

(x) Upon completion of the hydrogeologist's work on Phase II of NTUI's current expansion plan for the North Topsail sewer system, NTUI's consulting engineer will develop plans for the expansion based on the hydrogeologist's report and will submit those plans to DWQ for approval and will request DWQ's "express review" procedure for these plans.

(y) Assuming there are no permitting delays and that DWQ approves the plans in a timely manner, NTUI anticipates that construction on the plant expansion should be completed by mid-2007.

(z) Phase III involves the future expansion of the plant and will follow the same process for developing additional capacity as Phase II. NTUI plans this future expansion of the plant to include an additional 1.5 million gallons. NTUI will use its best efforts to complete any additional hydrogeology work and consulting engineering plans necessary for Phase III by the end of 2007.

(aa) If the current real property owned by NTUI is insufficient to accommodate the Phase II and/or Phase III expansions discussed above, NTUI shall use such other means as necessary, reasonable, and prudent to satisfy these capacity expansions plans (including the acquisition of additional property so long as such acquisition is legally permissible and the cost is approved as reasonable and prudent by the Commission).

(bb) NTUI will make such other improvements or expansions to the mains as may be necessary to provide sufficient transport capacity of the waste stream from Topsail Island to the wastewater

treatment facility in order to meet the demand for sewer services within the municipal corporate limits of the Town of North Topsail Beach.

- (cc) A representative of NTUI will attend, if requested, at least quarterly meetings of the Town of North Topsail Beach Board of Alderman or a designated committee thereof to orally report on NTUI's efforts and progress consistent with the Stipulation entered into between Applicants and the Town of North Topsail Beach and to answer questions about current and future sewer utility service in the Town of North Topsail Beach.
- (dd) Upon receipt of telephone or e-mail notice by local NTUI personnel in Onslow County from the Mayor or Town Manager of the Town of North Topsail Beach or their designee of odor problems from the pump station near the Highway 210 bridge, NTUI will take immediate action to evaluate the problem and take such action as it deems appropriate (which may include aeration and chemical/physical deodorizers).
- (ee) Within ninety days following the final order approving the stock transfer, fecal and total coliform tests of the surface water at the pump station near the Highway 210 bridge will be conducted, at NTUI's expense, and the complete results of the tests will be provided to the Town Manager of the Town of North Topsail Beach.
- (ff) NTUI shall have access to sufficient equity and debt capital to enable NTUI to adequately fund the above-referenced capital improvement plan, including the permitting thereof, and otherwise to meet the service needs of the NTUI customers at a reasonable cost.
- (gg) All plant expansions, land, and capital expenditures referenced above must be considered reasonable and prudent by the Commission. Additionally, Utilities Inc. and/or NTUI will be allowed to recover investor-financed investments through depreciation or amortization plus earn a reasonable rate of return on the undepreciated balance through its rate structure.
- (hh) By utilizing the standard of 120 gallons per bedroom, the expansion of NTUI should result in the following:
  - i. In Phase II, the expanded plant will have the treatment capacity of approximately 1,700,000 gpd. This translates to a system capacity of approximately 4,722 three-bedroom homes.
  - ii. Upon completion of Phase III, the expanded plant will have the treatment capacity of approximately 3,370,000 gpd. This translates to a system capacity of approximately 9,360 three-bedroom homes.

- (ii) NTUI shall continue to use a first-come, first-served, nondiscriminatory process for allocating capacity as it becomes available.
- (jj) All monthly reports to the Commission to be filed pursuant to Section "(u)" of the Stipulation Between Applicants and Public Staff dated February 3, 2006 (hereinafter "Reports") will be provided monthly to the Town Manager of the Town of North Topsail Beach.
- (kk) NTUI will prepare and publish formal written procedures to implement the current first-come, first-served, nondiscriminatory process for allocating capacity as it becomes available (including the process for notification to those on the list who are eligible to receive capacity when it becomes available) and will include it as soon as practicable as part of one of the Reports. Any changes in the written procedures will be disclosed in subsequent Reports.
- (ll) By the end of the first full month after the final order of the Commission approving the stock transfer and every three months thereafter, NTUI will provide to the North Carolina Utilities Commission Public Staff, on a confidential basis and subject to appropriate non-disclosure protections, the list of customers, in priority order, who have requested and are waiting to receive sewer service from NTUI at the end of each quarter. This confidential list will be updated quarterly and will also indicate the previously listed customers who have received their allocated capacity since the previous quarter's report. NTUI will also make available publicly the list of all persons who have received their allocation of capacity during the previous quarter.
- (mm) NTUI will seek permission from the Commission as soon as practicable following the final order approving the stock transfer to take reserved capacity from individuals not ready to build and allocate it to those interests that are currently ready to build. The reserved capacity taken from the first party would then be substituted with a reservation for future capacity.
- (nn) If, for reasons beyond its control, NTUI cannot fulfill the obligations set forth in this Stipulation, it agrees to enter into good faith discussions and to cooperate with any other entity that would be able to provide the necessary infrastructure and capacity in order to satisfy the capacity projections set forth above (such alternatives may include, but are not limited to, the wholesale purchase of available bulk capacity).

2. That the Joint Stipulation of the Applicants and the Public Staff signed and filed with the Commission on February 3, 2006, is hereby approved.

3. That the Joint Stipulation of the Applicants and the Town of North Topsail Beach and the other North Topsail Intervenor signed and filed with the Commission on February 21, 2006, is hereby approved.

4. That the stipulation between the Town of North Topsail Beach, the North Topsail Intervenor and the Applicants shall be applicable only to the North Topsail franchise area, including future expansions. Stipulation paragraph 15(b), which is ordering paragraph 1(gg), shall remain operable only so long as North Topsail Utilities retains stand-alone rates and the North Topsail franchise service area does not become part of the uniform rate structure of any of Utilities, Inc.'s other North Carolina regulated subsidiaries. Stipulation paragraph 15(b) (ordering paragraph 1(gg), shall have no precedential value for any of the service areas of Utilities, Inc.'s other North Carolina Commission regulated subsidiaries.

5. That, the Commission is particularly troubled by the concerns brought to our attention by the Carolina Trace, Fairfield Mountains and Corolla Light/Monteray Shores communities (as well as those brought to our attention by intervenors who have subsequently withdrawn their petitions after extended negotiations with the Applicants). To address these concerns, we require the Applicants to do the following:

A. Carolina Trace

1. That Applicants shall file a comprehensive report including planned actions within 30 days of this order addressing the concerns identified by the Carolina Trace customers in this proceeding. The comprehensive report shall include at a minimum the following:

- a. The efforts undertaken by Utilities, Inc. or the appropriate subsidiary to locate and/or map any and all sewer lines and mains in the Carolina Trace service areas.
- b. An update on the status of wastewater treatment in the service area including a detailed explanation of the capacity of current plants, the necessity for expansion of the treatment plant in the foreseeable future, and actions being taken to meet the wastewater treatment needs of current customers.
- c. A timetable for completing the location and mapping of existing sewer lines and mains serving Carolina Trace.
- d. Methods which can be utilized to repair breaks in service lines which will minimize road cuts. This report shall include the costs of acquisition of technology which will minimize road repairs and the potential effect, if any, on the rates of customers.
- e. A detailed report on the current inspection program that Utilities, Inc. or the appropriate subsidiary is employing in the absence of complete maps for its service lines.
- f. Any other concerns raised by the Carolina Trace customers in the hearing on this matter.

B. Fairfield Mountains

1. That Applicants shall file a comprehensive report within 30 days of this order addressing the concerns of the Fairfield Mountains public witnesses. The comprehensive report shall include at a minimum the following:

- a. A statement of Utilities, Inc. or the appropriate subsidiary's position as to whether it is required to provide fire protection services to Fairfield Mountains.
- b. To the extent that information is non-proprietary, copies of documents including bankruptcy documents, contracts and maps of its service territories which explain the rights, duties and obligations of Utilities, Inc. or the appropriate subsidiary to provide utility service to Fairfield Mountains. To the extent that the documents listed above are deemed proprietary by the company, those documents shall be filed under seal pending review by the Commission to determine if the documents shall be released.
- c. To the extent that the information is non-proprietary, plans for expansion or service in areas contiguous to Fairfield Mountains which may necessitate transfer of water from wells located in Fairfield Mountains to the contiguous areas. To the extent that the documents listed above are deemed proprietary by the company, those documents shall be filed under seal pending review by the Commission to determine if the documents shall be released.
- d. Any other concerns that were raised by the Fairfield Mountains customers in the hearing on this matter.

C. Corolla Light/Monteray Shores

1. That Applicants shall file a comprehensive report within 30 days of this order addressing the concerns of the Corolla Light/Monteray Shores consumers, which report shall include at a minimum the following:

- a. A statement of Utilities, Inc. or the appropriate subsidiary of what actions, if any, it has previously taken to lower the chloride levels and trihalomethane levels in the water supply.
- b. A statement of Utilities, Inc. or the appropriate subsidiary of what actions, if any, it intends to take in the future to lower the chloride levels and the trihalomethane levels in the water supply.
- c. The position of Utilities, Inc. or its appropriate subsidiary as to the complaints pertaining to lack of water pressure and what steps, if any, it has previously taken or intends to take in the future to resolve any deficiencies regarding same.

Each of the aforementioned reports required in sections A, B, and C of this paragraph shall be filed contemporaneously with the Public Staff and the Commission until further notice by the Commission. Within thirty days of

receiving said reports, the Public Staff shall file comments addressing each item included within the report.

The Commission intends to vigorously monitor the Applicants' compliance with these requirements and shall retain jurisdiction to reopen these issues for further review and remediation should the need arise in the future.

6. That Utilities, Inc. shall file with the Commission a pre-closing and post-closing balance sheet and any journal entries made to record the stock transfer and any related transactions within ninety days of closing.

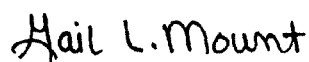
7. That Utilities, Inc. shall provide written notification to the Commission within 10 days after the transfer has been completed.

8. That the Notice to Customers, attached as Appendix A, shall be mailed with sufficient postage to all customers of the Utilities Inc. North Carolina operating subsidiaries within 15 days of the date of this Order, and that Applicants shall submit to the Commission the attached Certificate of Service properly signed and notarized not later than five days.

ISSUED BY ORDER OF THE COMMISSION.

This the 3<sup>rd</sup> day of April, 2006.

North Carolina Utilities Commission



Gail L. Mount, Deputy Clerk

Lh032706.01



STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

DOCKET NO. W-1000, SUB 11

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	
Application of Hydro Star, LLC	)	NOTICE TO CUSTOMERS
to Acquire the Outstanding	)	OF TRANSFER
Stock of Utilities, Inc.	)	

BY THE COMMISSION: Notice is given that the North Carolina Utilities Commission has approved the application of Hydro Star, LLC to acquire the outstanding stock of Utilities, Inc. pursuant to a Stock Purchase Agreement between Hydro Star, LLC and Nuon Global Solutions USA, BV. Utilities, Inc. owns nine water and/or sewer operating subsidiaries in North Carolina subject to the Commission's jurisdiction. These are: Carolina Water Service Inc. of North Carolina; CWS Systems, Inc.; Transylvania Utilities, Inc.; Carolina Trace Utilities, Inc.; Elk River Utilities, Inc.; North Topsail Utilities, Inc.; Carolina Pines Utilities, Inc.; Bradfield Farms Water Company; and Nero Utility Services, Inc.

During the hearing, witnesses presented testimony that highlighted service issues in the communities of North Topsail Beach, Carolina Trace, Fairfield Mountains and Corolla Light/Monteray Shores. The Commission has imposed on the Applicants reporting and monitoring requirements to address these quality of service issues.

There is no change in the current rates associated with this transfer. There is no change in the mailing address or telephone number of the utility companies. Should there be any future changes in telephone numbers or mailing addresses, customers will be notified.

ISSUED BY ORDER OF THE COMMISSION.

This the 3<sup>rd</sup> day of April, 2006.

NORTH CAROLINA UTILITIES COMMISSION

*Gail L. Mount*

Gail L. Mount, Deputy Clerk

CERTIFICATE OF SERVICE

I, \_\_\_\_\_, mailed with sufficient postage or hand delivered to all affected customers the attached Notice to Customers issued by the North Carolina Utilities Commission in Docket No. W-1000, Sub 11, and the Notice was mailed or hand delivered by the date specified in the Order.

This the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Utility Company

The above named Applicant, \_\_\_\_\_, personally appeared before me this day and, being first duly sworn, says that the required Notice to Customers was mailed or hand delivered to all affected customers, as required by the Commission Order dated \_\_\_\_\_, Docket No. W-1000, Sub 11.

Witness my hand and notarial seal, this the \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Address

\_\_\_\_\_  
Date

My Commission Expires:

(SEAL)