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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-374

Filed 19 August 2026

North Carolina Utilities Commission, Nos. W-1300, SUB 71; W-1300, SUB 92

IN THE MATTER OF: BLUE HERON ASSET MANAGEMENT, LLC, and LIBERTY
SENIOR LIVING, LLC, Complainants,

v.

OLD NORTH STATE WATER COMPANY, INC., Defendant.

Appeal by Complainant Blue Heron Asset Management, LLC from orders entered 3 April 2024 and 3 December 2024 by the North Carolina Utilities Commission. Heard in the Court of Appeals 15 October 2025.

Dowling PLLC, by Attorneys Craig D. Schauer and Troy D. Shelton, for complainant-appellant Blue Heron Asset Management, LLC.

Fox Rothschild LLP, by Attorneys Elizabeth Sims Hedrick, Kip D. Nelson, and Cordon M. Smart, for defendant-appellee.

STADING, Judge.

This case deals with a disagreement over the contract price for the connection of a sewage system between Blue Heron Asset Management, LLC (“Blue Heron”) and Old North State Water Company, Inc. (“ONSWC”). Blue Heron appeals from orders of the North Carolina Utilities Commission (the “Commission”). On appeal, Blue Heron asserts the Commission erroneously allowed ONSWC to increase its rate for

the connection fee from the original agreed contractual price of \$1,500 to \$4,000 per residential equivalent unit (“REU”),¹ and therefore the true contract price should be \$213,000. Blue Heron also maintains the Commission should have required that ONSWC pay a double refund and penalty under N.C. Gen. Stat. § 62-139 (2025), and the Commission should have awarded it reasonable interest on the refund under N.C. Gen. Stat. § 62-130(e) (2025). After careful consideration, we affirm the Commission’s order in part, and remand in part.

I. Background

Blue Heron is a real estate investment management and development firm that owns an apartment complex, Knoll at Briar Chapel, in Pittsboro. Liberty Senior Living, LLC² develops, owns, and manages senior living communities with locations across North Carolina, including Inspire Briar Chapel. Both the Knoll and Inspire developments fell within ONSWC’s service territory for wastewater services. ONSWC is a state-regulated utility company, subject to the Commission, that provides water and sewer services in North Carolina.

On 20 April 2015, the Commission “approved ONSWC’s acquisition of the Briar Chapel Utilities, LLC . . . wastewater franchise and approved a connection fee for the Briar Chapel subdivision service area of \$1,500 per REU[.]” Several years later, on 8 March 2021, ONSWC petitioned the Commission “to amend its tariff to increase the

¹ An REU “is a unit of wastewater treatment capacity[.]”

² Liberty Senior Living, LLC did not appeal from the Commission’s orders.

connection fee for the Briar Chapel subdivision service area from \$1,500 per REU to \$4,000 per REU.” ONSWC relied upon cost of service “calculations to support its request for the increased connection, which was calculated to maximize [contributions in aid of construction] and reduce usage rates to customers.”³ The Commission ultimately approved ONSWC’s request on 19 April 2021, allowing the connection fee to increase from \$1,500 to \$4,000 per REU.

During the pendency of ONSWC’s petition to increase its connection fee with the Commission, Blue Heron submitted an application to ONSWC for sewage services on 23 March 2021. The application provided the following pertinent information:

UPON RECEIPT OF THIS APPLICATION AND
PAYMENT OF ALL FEES

THE METER SET WILL BE REQUESTED FOR THE
DATE TO START SERVICE REQUESTED ABOVE.
PLEASE ALLOW AT LEAST 2 BUSINESS DAYS FOR
PROCESS OF YOUR APPLICATION.

. . . .

³ See *State ex rel. Utils. Com. v. Heater Utils., Inc.*, 288 N.C. 457, 461, 219 S.E.2d 56, 58–59 (1975) (“A typical ‘contribution in aid of construction’ occurs under the following circumstances: An individual or group of individuals desiring service from a water, gas, electric, telephone or other public utility company is located so far from the company’s existing main or line that the company is unwilling to bear the expense of constructing the necessary extension of its facilities and the regulatory commission is unwilling or unable to compel it to do so. The company agrees to render service if the person or persons desiring it will pay all or part of such cost of construction. This they do, title to the newly constructed facility passing to the company which, expressly or impliedly, agrees to use such facility in supplying service to such patrons and their successors in interest. The facility so constructed is thereafter used and maintained by the company just as are similar facilities constructed entirely with company funds, the cost of such maintenance being a proper operating expense of the company. The amount so paid by the patron or patrons for the construction of the facility is entered on the books of the company under the caption, ‘Contributions In Aid Of Construction,’ or some similar designation.”).

*****THIS APPLICATION WILL BECOME A BINDING
CONTRACT UPON ACCEPTANCE BY THE
UTILITY*****

I, we, the undersigned (“Consumer”) hereby request water/waste-water service from Old North State Water Co . . . at the Service Address and for the use stated below and none other. Consumer agrees to promptly pay the application fees, service fees, deposits, late fees, after-hours fees, processing fees and all other charges and fees of Utility (“Charges”) at Utility’s standard rates as set by Utility, now or at any future time, and to comply with Utility’s rules, regulations and policies, as modified from time to time by the Utility (“Rules”). Utility’s obligation to provide water/waste-water service is subject to (i) Utility’s acceptance of this Application and (ii) the provisions of any water or sewer or sewer license, franchise, easement, right-of-way or other agreements that may exist between Utility and any governmental authority or other person.

Blue Heron did not complete portions of the application and did not include a “date to start new service.” Notwithstanding this, Blue Heron asked ONSWC to accept its application so that it could secure the necessary permits from Chatham County. That same day, ONSWC told Blue Heron that it would send an invoice for the connection services at a later date and provided notice to the county of its intent to provide sewage services to Blue Heron. At this time, Blue Heron did not provide any payment.

On 19 April 2021, the same day the Commission approved ONSWC’s connection fee increase, ONSWC “provided Blue Heron an invoice for the connection fees and charged the increased connection fee of \$4,000 per REU.” ONSWC ultimately “calculated the connection fees for Blue Heron to be \$1,082,320 (270.6

REU's x \$4,000)." Blue Heron contested this amount, asserting that at the time the contract was formed, the connection fee rate in effect was \$1,500 per REU. Blue Heron thus maintained that ONSWC charging it the increased fee ran afoul of their contractually agreed upon terms. Under protest, Blue Heron "paid the connection fees . . . so that [it] could complete construction of the Knoll apartment complex" on 31 August 2022.

On 26 May 2023, Blue Heron filed a complaint against ONSWC with the Commission, asserting the increased connection fee and calculation ran afoul of the Administrative Code and the North Carolina General Statutes. In their answer, ONSWC moved for dismissal of the complaint. Blue Heron thereafter moved for judgment on the pleadings on 21 July 2023. The Commission set a hearing date of 4 October 2023.

After considering the parties' arguments, the Commission entered an interlocutory order on 3 April 2024, concluding: "ONSWC and Blue Heron entered into a wastewater agreement on March 23, 2021, but that agreement does not require ONSWC to charge a connection fee of \$1,500 per REU"; and N.C. Gen. Stat. § 62-139(a) and 4 N.C. Admin. Code 11 R10-20 "dictate that the connection fee approved by the Commission at the time of interconnection—here, \$4,000 per REU—is the fee to be paid by the customer at the time of the connection." The Commission therefore ordered the following:

1. That ONSWC is entitled to collect from Blue Heron the

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amount of \$4,000 per REU for connection fees that the Commission approved in the Sub 71 Order for the Knoll development;

. . . .

3. That ONSWC is directed to file a petition in the Sub 71 docket no later than 20 days after the date of this Order to amend its tariff to expand upon the definition of REU and include the method of calculating REUs that applies to non-residential customers for review by the Public Staff and consideration by further order of the Commission; and

4. That the Commission will issue a further order concerning the number of REUs to use in the calculation of connection fees for Complainants and ONSWC's February 8, 2023 invoice to Blue Heron for the first four months of sewer service once ONSWC's tariff (Appendix A) included in the Sub 71 Order has been amended and the Commission approves the calculation of REUs for non-residential development.

The Commission then issued its final order on 3 December 2024, which calculated the precise amount Blue Heron owed ONSWC under the contract, calculated the amount ONSWC needed to refund Blue Heron, and denied Blue Heron's request for a double refund and penalty pursuant to N.C. Gen. Stat. § 62-139:

For Blue Heron: 142 REUs (51,140 GPD/ 360/REU = 142 REUs); the connection fee calculation (142 REUs x \$4,000 = \$568,000); and the monthly service charge calculation (142 REUs x \$42.30 per REU = \$6,006.60).

. . . .

Consequently, the Commission concludes that ONSWC is entitled to collect payment from Blue Heron . . . in the amount of \$568,000 . . . for connection fees related to the Knoll . . . development[]. . . .

Finally, in regard to Complainants' request that the Commission direct ONSWC to pay a double refund to Blue Heron for overcharges and \$10 per day in penalties for noncompliance with N.C.G.S. § 62-139 since February 28, 2023, and that the Commission issue an order accounting for all monetary losses caused by ONSWC's breach of its statutory and regulatory obligations, the Commission declines to mandate such punitive actions. The Commission concludes that such punitive actions are not warranted because the method for determining REUs for non-residential customers in the Briar Chapel service area had not been determined until the Commission issued the Sub 71 Order. As a result of this complaint proceeding, in the Sub 71 Order, the Commission approved ONSWC's tariff that includes the methodology for calculating charges for nonresidential customers, including Complainants.

Blue Heron timely appealed from both orders on 2 January 2025.

II. Analysis

Blue Heron argues "the Commission erred by ruling that Blue Heron's contract with [ONSWC], formed on 23 March 2021, allowed [ONSWC] to charge a rate for the connection service that was not in effect on 23 March 2021." Specifically, Blue Heron maintains the Commission erroneously concluded that ONSWC could increase the sewage connection fee from \$1,500 to \$4,000 per REU. Blue Heron also argues the Commission erroneously denied its request for a double refund and penalty under N.C. Gen. Stat. § 62-139 and erroneously failed to award Blue Heron interest with the refund as a matter of law under N.C. Gen. Stat. § 62-130(e).

A. Standard of Review

Article 1, Chapter 62 of the North Carolina General Statutes sets out the

Public Utilities Act. N.C. Gen. Stat. § 62-1 et seq. (2025). The Act provides the standard of review for decisions from the North Carolina Utilities Commission:

So far as necessary to the decision and where presented, the court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning and applicability of the terms of any Commission action. The court may affirm or reverse the decision of the Commission, declare the decision null and void, or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the appellants have been prejudiced because the Commission's findings, inferences, conclusions, or decisions are any of the following:

- (1) In violation of constitutional provisions.
- (2) In excess of statutory authority or jurisdiction of the Commission.
- (3) Made upon unlawful proceedings.
- (4) Affected by other errors of law.
- (5) Unsupported by competent, material, and substantial evidence in view of the entire record as submitted.
- (6) Arbitrary or capricious.

Id. § 62-94(b). “The decision of the Commission will be upheld on appeal unless it is assailable on one of the statutory grounds enumerated in section 62-94(b).” *State ex rel. Utils. Comm’n v. Carolina Util. Customers Ass’n*, 348 N.C. 452, 459, 500 S.E.2d 693, 699 (1998) (citation modified); *State ex rel. Utils. Comm’n v. Bald Head Island Transp., Inc.*, 296 N.C. App. 199, 206, 908 S.E.2d 851, 857 (2024) (citation omitted) (noting “judicial reversal of an order of the Utilities Commission is a serious matter

for the reviewing court which can be properly addressed only by strict application of the six criteria which circumscribe judicial review”).

Under section 62-94, “the essential test to be applied is whether the Commission’s order is affected by errors of law or is unsupported by competent, material, and substantial evidence in view of the entire record as submitted.” *State ex rel. Utils. Com. v. Pinehurst*, 99 N.C. App. 224, 226, 393 S.E.2d 111, 113 (1990); N.C. Gen. Stat. § 62-94(c) (“In making these determinations, the court shall review the whole record or the portions of it that are cited by any party . . .”). That said,

the Commission is responsible for determining the weight and credibility to be afforded to the testimony of any witness, including any expert opinion testimony, with the Commission’s decision being entitled to great deference given that its members possess an expertise in utility ratemaking that makes them uniquely qualified to decide the issues that are presented for their consideration.

State ex rel. Utils. Comm’n v. Stein, 375 N.C. 870, 900, 851 S.E.2d 237, 256 (2020) (citation modified). “Assuming adequate findings of fact, supported by competent, substantial evidence, [t]he Commission’s determination . . . may not be reversed even if we would have reached a different conclusion upon the evidence.” *Id.* (citation modified). Moreover, “unchallenged findings of fact are deemed supported by such evidence and are consequently binding on appeal.” *Bald Head Island Transp.*, 296 N.C. App. at 206, 908 S.E.2d at 857 (citation modified).

Subsection 62-94(c) also notes that “due account shall be taken of the rule of prejudicial error.” N.C. Gen. Stat. § 62-94(c). And “the Commission’s conclusions of

law . . . are reviewed *de novo*.” *Stein*, 375 N.C. at 900, 851 S.E.2d at 256 (citation modified). “Under *de novo* review, the Court considers the matter anew and freely substitutes its own judgment for that of the Commission.” *In re Appeal of the Church of Yahshua the Christ*, 160 N.C. App. 236, 238, 584 S.E.2d 827, 829 (2003) (citation modified). And,

when the issue on appeal is whether a state agency erred in interpreting a statutory term, an appellate court may freely substitute its judgment for that of the agency and employ *de novo* review. Although the interpretation of a statute by an agency created to administer that statute is traditionally accorded some deference by appellate courts, those interpretations are not binding. “The weight of such [an interpretation] in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.”

Brooks v. McWhirter Grading Co., 303 N.C. 573, 580–81, 281 S.E.2d 24, 29 (1981) (cleaned up).

B. Price Per REU

Blue Heron asserts the Commission erred by concluding that the service connection fee, or price per REU, is determined on the date of interconnection as opposed to the date Blue Heron submitted its application to ONSWC. Blue Heron maintains that: (1) the application submitted by Blue Heron to ONSWC “established the price for” ONSWC’s connection service at \$1,500 per REU; (2) “a contract incorporates the law as it exists at the time of the contract’s formation” under general

principles of contract law; (3) a plain reading of 4 N.C. Admin. Code 11 R10-20 and N.C. Gen. Stat. § 62-139 provides “that a contract for a connection service incorporates the rate at the time of the contract”; (4) any other interpretation of 4 N.C. Admin. Code 11 R10-20 would render a public utility’s ability to comply with 4 N.C. Admin. Code 11 R10-17 impossible and would run afoul of a prior decision of the Commission; and (5) the interests of equity mandate that a utility company “collect the connection fee effective at the time of sale.”

“Chapter 62 empowers the Commission ‘to regulate public utilities generally, their rates, services and operations, and their expansion’” *State ex rel. Utils. Comm’n v. Carolina Water Serv.*, 225 N.C. App. 120, 133, 738 S.E.2d 187, 196 (2013) (quoting N.C. Gen. Stat. § 62-2(b)). The Commission “is considered ‘an administrative board or agency of the General Assembly’ and is empowered to promulgate rules and regulations and fix utility rates.” *Id.* (quoting N.C. Gen. Stat. § 62-23). “By enactment of Chapter 62, our General Assembly . . . conferred upon the Commission broad powers to regulate public utilities and to compel their operation in accordance with the policy of the State” *State ex rel. Utils. Comm’n v. Pub. Staff - N.C. Utils. Comm’n*, 123 N.C. App. 623, 625, 473 S.E.2d 661, 663 (1996).

N.C. Gen. Stat. § 62-133 provides the rules and procedures pertaining to how rates are fixed for “certain water and sewer utilities.” The statute provides that “the Commission shall fix such rates as shall be fair both to the public utilities and to the consumer.” *Id.* (citation modified). A public utility may not “charge, demand, collect

or receive a greater or less compensation for any service rendered by such public utility than that prescribed by the Commission[.]” *Id.* § 62-139. Similarly, Title 4 of the Administrative Code provides, “no utility shall charge or demand or collect or receive any greater or less or different compensation for sale of sewer service . . . than those rates and charges approved by the Commission and in effect at that time.” 4 N.C. Admin. Code 11 R10-20. Thus, the rates a public utility must charge are determined by the Commission—not the public utility companies or customers—and cannot deviate on a case-by-case basis. Additionally, “a utility shall, when accepting application for sewer service, give full information to the applicant concerning type of service to be rendered and rates which will be applicable.” 4 N.C. Admin. Code 11 R10-17 (citation modified).

Turning to general contract principles, “there must be a meeting of the minds” concerning “the essential and material contractual term of price[.]” *Connor v. Harless*, 176 N.C. App. 402, 405, 405, 626 S.E.2d 755, 757, 757 (2006). “A contract is nugatory and void for indefiniteness if it leaves any material portions open for future agreement.” *Id.* (cleaned up). More specifically, “an agreement which does not specify the price or any method for determining it, but which leaves the price for future determination and agreement of the parties, is not binding.” *Howell v. C. M. Allen & Co.*, 8 N.C. App. 287, 289, 174 S.E.2d 55, 56 (1970) (cleaned up). That said, “the General Assembly undoubtedly had in mind the establishment of uniform service by public utilities, and likewise the establishment of uniform rates for such service

within the prescribed classifications.” *Russ v. W. Union Tel. Co.*, 222 N.C. 504, 508, 23 S.E.2d 681, 684 (1943). Once a rate is approved by the Commission, it “becomes a matter of law rather than one of contract.” *Id.* at 508–09, 23 S.E.2d at 684.

Here, the Commission determined that Blue Heron and ONSWC entered into a wastewater agreement on 23 March 2021. In doing so, the Commission concluded: the agreement did not require that ONSWC charge a connection fee of \$1,500 per REU; the connection fee should be determined at the time of interconnection; and the connection fee is whatever amount that is approved by the Commission on the date of interconnection. More specifically, the Commission determined:

Even with the “binding contract” language in the Wastewater Application, the Commission concludes that ONSWC’s acceptance of the Wastewater Application with all of the blanks (information not filled in) in it, as well as the action of ONSWC sending Chatham County an Intention to Provide Sewer Service, only created an agreement between ONSWC and Blue Heron for ONSWC to begin the necessary actions to be able to provide wastewater service to Blue Heron. The Commission concludes that ONSWC and Blue Heron entered into a wastewater agreement on March 23, 2021, for ONSWC to provide wastewater service to Blue Heron at a future time when Blue Heron is ready to interconnect to the Wastewater System.

....

According to Blue Heron, the practical effect of Rules R10-20 and R10-17(a) in this situation is that the rules would require that connection fees be determined and locked in as of the date of a contract, even if the connection fees are subsequently increased by the time of interconnection. The Commission finds that Blue Heron’s position, if taken to its

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logical conclusion, would yield an absurd result in regard to both rates and connection fees. . . . The Commission therefore concludes that N.C.G.S. § 62-139(a) and Rule R10-20 dictate that the connection fee approved by the Commission at the time of interconnection is the fee to be paid by the customer at the time of interconnection. In this case, the connection fee of \$4,000 per REU approved by the Commission at the time Blue Heron interconnects is the fee to be charged by ONSWC. The Commission notes that even if Blue Heron were not familiar with N.C.G.S. § 62-139(a) and Rule R10-20, Blue Heron was put on notice by the cover page to the Wastewater Application that the connection fee is subject to change.

As to Blue Heron's first argument, a review of the application confirms that Blue Heron agreed "to promptly pay the . . . service fees . . . at Utility's standard rates as set by Utility, *now or at any future time*, and to comply with Utility's rules, regulations and policies, as modified from time to time by the Utility." (emphasis added). The Commission establishes the rate a utility company may charge. N.C. Gen. Stat. § 62-133; 4 N.C. Admin. Code 11 R10-20. The utility company, in turn, then must charge whatever rate is approved by the Commission at that point in time. *Id.* When submitting its application, Blue Heron did not provide a connection date. Thus, at the time of submitting its application, Blue Heron agreed to "pay the . . . service fees" as prescribed by the Commission "at any future time" as opposed to a specific price point on a certain connection date.

Additionally, the application did not "leave[] the price for future determination and agreement of the parties," *Howell*, 8 N.C. App. at 289, 174 S.E.2d at 56, since the connection fee is expressly controlled by the Commission. *See, e.g., Russ*, 222 N.C. at

508–09, 23 S.E.2d at 684. Blue Heron, in signing and submitting its application, expressly agreed to render payments in accordance with the rates set by the Commission—both present and future. *See* N.C. Gen. Stat. § 62-3(24) (2025) (“Rate’ means every compensation, charge, fare, tariff, schedule, toll, rental and classification, or any of them, demanded, observed, charged or collected by any public utility, for any service product or commodity offered by it to the public, and any rules, regulations, practices or contracts affecting any such compensation, charge, fare, tariff, schedule, toll, rental or classification.”). As noted in *Russ*, once the Commission sets a rate, it “becomes a matter of law rather than one of contract.” 222 N.C. at 508–09, 23 S.E.2d at 684.

Blue Heron next asserts the Commission erroneously interpreted N.C. Gen. Stat. § 62-139(a) and 4 N.C. Admin. Code 11 R10-20 when rendering its decision. More specifically, Blue Heron contends that the connection fee should be determined at the time of the “sale” as opposed to the time when the sewage services are interconnected under a plain reading of 4 N.C. Admin Code 11 R10-20.

“The rules of statutory construction” apply when our Courts interpret administrative regulations. *Kyle v. Holston Grp.*, 188 N.C. App. 686, 692, 656 S.E.2d 667, 671 (2008). “Statutory interpretation properly begins with an examination of the plain words of the statute.” *Cole v. N.C. Dep’t of Pub. Safety*, 253 N.C. App. 270, 278, 800 S.E.2d 708, 714 (2017). If “the language of a statute is clear and unambiguous, there is no room for judicial construction, and the courts must give it

its plain and definite meaning.” *Id.* (cleaned up). To that end, “words are to be given their plain and ordinary meaning unless the context, or the history of the statute, requires otherwise.” *Id.* (cleaned up). But “if the plain reading of a statute leads to a result so absurd that no reasonable legislator could have intended it, we can ignore that absurd interpretation and find a reasonable one.” *C Invs. 2, LLC v. Auger*, 277 N.C. App. 420, 430, 860 S.E.2d 295, 302 (2021) (citation modified). Additionally, “it is a fundamental principle of statutory interpretation that courts should evaluate [a] statute as a whole and . . . not construe an individual section in a manner that renders another provision of the same statute meaningless.” *Lunsford v. Mills*, 367 N.C. 618, 628, 766 S.E.2d 297, 304, 304 (2014) (cleaned up).

4 N.C. Admin. Code 11 R10-20 provides:

No utility shall charge or demand or collect or receive any greater or less or different compensation for sale of sewer service, or for any service connected therewith, than those rates and charges approved by the Commission and in effect at that time.

A plain reading demonstrates that a public utility, such as ONSWC, may not charge, collect, or receive any amount for the “sale of sewer service, or for any service connected” to the sale of sewer service other than the rates “approved by the Commission and in effect at that time.” *Id.* Thus, the provision delineates between the sale of sewer service and any service connected therewith. *See* N.C. Gen. Stat. § 62-3(27) (defining service as “any service furnished by a public utility, including any commodity furnished as a part of such service and any ancillary service or facility

used in connection with such service”); *see also* 4 N.C. Admin. Code 11 R1-01 (“The definitions contained in G.S. 62-3 of the 1963 Public Utilities Act shall be applicable to all rules and regulations of the Commission, and in addition thereto, the following terms shall be construed as herein defined unless the context indicates that a different meaning is intended[.]”); *see also* SALE, Black’s Law Dictionary (12th ed. 2024) (citation modified) (defining sale as “the transfer of property or title for a price”). The provision also provides a temporal component as to what amount may be charged, collected, or received—for both the sale of sewer service and any services connected to the sale—by using the phrase, “in effect at that time.” 4 N.C. Admin. Code 11 R10-20.

It logically follows that the future connection of a sewage system—in this case, seventeen months after submitting the application for sewage services—amounts to a “service connected” to the sale of a sewer service. *Id.* Thus, the price to be collected for “any service connected” to the sale of Blue Heron’s sewer service must be the amount in effect at the time the service is rendered. *Id.*; *Cole*, 253 N.C. App. at 278, 800 S.E.2d at 714. Such a reading is harmonious with N.C. Gen. Stat. § 62-139(a), which contemplates the provision of services in the future by using the phrase, “or to be rendered by such public utility”:

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

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or accept any service from a public utility for a compensation greater or less than that prescribed by the Commission.

(emphasis added); *see also* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 252 (1st ed. 2012) (citation modified) (noting that “laws dealing with the same subject—being *in pari materia* (translated as ‘in a like matter’)—should if possible be interpreted harmoniously”). Accordingly, Blue Heron’s assignment of error is overruled.

Blue Heron next asserts that the Commission’s interpretation of 4 N.C. Admin. Code 11 R10-20 “made it impossible for a sewer utility to comply with R10-17(a).” That provision provides, “a utility shall, when accepting application for sewer service, give full information to the applicant concerning type of service to be rendered and rates which will be applicable.” 4 N.C. Admin. Code 11 R10-17. A public utility can comply with this provision whether the recipient of sewage services provides the public utility with a date of interconnection or not. Indeed, the public utility could provide the sewage customer with the current rate, as well as any information concerning pending petitions to increase rates with the Commission that could impact the connection fee moving forward. Moreover, like ONSWC in this case, public utilities may adequately comply with this provision by including a provision in the sewage agreement like ONSWC’s:

I, we, the undersigned (“Consumer”) hereby request
water/waste-water service from Old North State Water Co
... at the Service Address and for the use stated below and

none other. Consumer agrees to promptly pay the application fees, service fees, deposits, late fees, after-hours fees, processing fees and all other charges and fees of Utility (“Charges”) at Utility’s standard rates as set by Utility, now or at any future time, and to comply with Utility’s rules, regulations and policies, as modified from time to time by the Utility (“Rules”). Utility’s obligation to provide water/waste-water service is subject to (i) Utility’s acceptance of this Application and (ii) the provisions of any water or sewer or sewer license, franchise, easement, right-of-way or other agreements that may exist between Utility and any governmental authority or other person.

For the aforementioned reasons, we hold the Commission did not commit error by concluding that the amount to be paid for Blue Heron’s sewage connection service should be determined on the date of interconnection.

C. Double Refund and Penalty

Blue Heron asserts that the Commission committed error by failing to require ONSWC to pay “a double refund and penalty” pursuant to N.C. Gen. Stat. § 62-139(b). Blue Heron maintains that the Commission had “no basis for finding that [ONSWC] had good cause to charge Blue Heron a higher rate.”

Subsection 62-139(b) provides that a public utility must pay a double refund and penalty if it willfully charges a rate in excess of that prescribed by the Commission:

Any public utility in the State which shall willfully charge a rate for any public utility service in excess of that prescribed by the Commission, and which shall omit to refund the same within 30 days after written notice and demand of the person overcharged, unless relieved by the Commission for good cause shown, shall be liable to him for

double the amount of such overcharge, plus a penalty of ten dollars (\$10.00) per day for each day's delay after 30 days from such notice or date of denial or relief by the Commission, whichever is later. Such overcharge and penalty shall be recoverable in any court of competent jurisdiction.

Id. That said, the Commission possesses the discretion to excuse a public utility from paying a double refund and penalty “for good cause shown.” *Id.* “Exercise of discretionary powers of the Commission will not be reversed by reviewing courts except upon a showing of capricious, unreasonable, or arbitrary action or disregard of law.” *Pub. Staff - N.C. Utils. Comm’n*, 123 N.C. App. at 627, 473 S.E.2d at 664 (citation modified). “Administrative agency decisions may be reversed as arbitrary or capricious if they are patently in bad faith or whimsical in the sense that they indicate a lack of fair and careful consideration or fail to indicate [] any course of reasoning and the exercise of judgment.” *Harding v. Bd. of Adjustment*, 170 N.C. App. 392, 398, 612 S.E.2d 431, 436 (2005).

Here, the Commission excused ONSWC from paying a penalty under section 62-139 since “the method for determining REUs for non-residential customers in the Briar Chapel service area had not been determined” until the Commission sent down its Sub 71 Order on 3 December 2024:

The Commission concludes that such punitive actions are not warranted because the method for determining REUs for non-residential customers in the Briar Chapel service area had not been determined until the Commission issued the Sub 71 Order. As a result of this complaint proceeding, in the Sub 71 Order, the Commission approved ONSWC's

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tariff that includes the methodology for calculating charges for nonresidential customers, including Complainants.

Thus, the Commission reasoned that ONSWC had not willfully overcharged Blue Heron; instead, the Commission reasoned that ONSWC mistakenly overcharged Blue Heron by using an incomplete methodology:

The Commission acknowledges that ONSWC's methodology used in this proceeding is similar to the methodology for non-residential customers However, the Commission observes that Appendix B approved by the Commission and attached to the Pluris Order specifically sets forth the definitions of REU for a single-family dwelling and a multi-unit development, and state how the connection fee for non-residential customers shall be calculated. However, in the Sub 71 Order, ONSWC's Schedule of Rates (Appendix A) does not define REU for both a single-family dwelling and a multi-unit development, and it also does not state the methodology for calculating the connection fee for a non-residential customer. Consequently, the Commission directs ONSWC to file a petition in the Sub 71 Docket number later than 20 days after the date of this Order to amend its tariff to expand the definition of REU and include its proposed method of calculating REUs for non-residential customers for review by the Public Staff and approval by further order of the Commission. ONSWC should also include in its petition information to support its use of 189 GPD in the calculation of the connection fees due from a non-residential customer.

The Commission's decision to excuse ONSWC was neither "patently in bad faith" nor "whimsical." *Harding*, 170 N.C. App. at 398, 612 S.E.2d at 436. Blue Heron's argument as to this issue is therefore overruled. *See* N.C. Gen. Stat. § 62-94(e) (noting that "any rule, finding, determination, or order made by the Commission

under this Chapter is prima facie just and reasonable”).

D. Interest

Blue Heron last argues that “the Commission must award Blue Heron reasonable interest on the refund already awarded” under N.C. Gen. Stat. § 62-130(e). ONSWC contends that Blue Heron cannot request interest under subsection 62-130(e) on appeal since it did not do so before the Commission.

N.C. Gen. Stat. § 62-130(e) (2025) (emphasis added) provides:

(e) In *all* cases where the Commission requires or orders a public utility to refund moneys to its customers which were advanced by or overcollected from its customers, the Commission *shall* require or order the utility to add to said refund an amount of interest at such rate as the Commission may determine to be just and reasonable; provided, however, that such rate of interest applicable to said refund shall not exceed ten percent (10%) per annum.

And, “[w]hen a statute is clearly mandatory, and its mandate is directed to the trial court, the statute automatically preserves statutory violations as issues for appellate review.” *In re E.D.*, 372 N.C. 111, 117, 827 S.E.2d 450, 454 (2019) (citation and quotation marks omitted).

Here, the Commission’s order does not address interest on the ordered refund. Since subsection 62-130(e) mandates “[i]n all cases where the Commission requires or orders a public utility to refund moneys . . . overcollected from its customers, the Commission shall require or order the utility to add to said refund an amount of interest,” we thus remand for further consideration of any “just and reasonable”

interest due on account of the ordered refund. N.C. Gen. Stat. § 62-130(e); *see also State ex rel. Utils. Com. v. Conservation Council of N.C.*, 312 N.C. 59, 68, 320 S.E.2d 679, 685–86 (1984).

III. Conclusion

For the reasons above, we affirm the order of the Commission in part, and remand in part for consideration of interest on the ordered refund.

AFFIRMED IN PART; REMANDED IN PART.

Judges COLLINS and GORE concur.

Report per Rule 30(e).