

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. W-218, SUB 526

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application by Aqua North Carolina, Inc.,	)	ORDER DENYING PETITION
202 MacKenan Court, Cary, North	)	TO INTERVENE, DENYING
Carolina 27511, for Authority to Adjust	)	REQUEST TO DECLARE
and Increase Rates for Water and Sewer	)	STIPULATION INVALID AND
Utility Service in All its Service Areas in	)	ALLOWING REQUEST TO OPEN
North Carolina	)	COMPLAINT DOCKET

BY THE PRESIDING COMMISSIONER: On August 14, 2020, Carolina Meadows, Inc. (Carolina Meadows or Petitioner) filed a Petition for Leave to Intervene Out of Time (Petition) and for an Order Declaring Invalid the Parties' Partial Settlement Agreement and Stipulation (Stipulation), or in the Alternative, to Open a Complaint Docket Against Aqua North Carolina, Inc (Aqua NC). On September 3, 2020, Aqua NC and the Public Staff filed verified responses to Carolina Meadows' Petition and Carolina Meadows filed reply comments on September 10, 2020. The Petition is now ripe for decision.

**Procedural Background**

On December 31, 2019, Aqua NC filed an Application to Increase Rates and Charges (Application or Rate Case Application) with the Commission requesting authority to adjust and increase its rates for water and sewer utility services in all its service areas in North Carolina, effective for service rendered on and after January 30, 2020. Along with its Application and in support thereof, Aqua NC filed the direct testimony and exhibits of its witnesses.

On January 21, 2020, the Commission issued an order declaring this proceeding a general rate case and suspending rates and on February 14, 2020, it issued Order Scheduling Hearings, Establishing Discovery Guidelines, and Requiring Customer Notice (Scheduling Order). Among other things, the Scheduling Order established the dates, times, and locations for six public witness hearings to take place in April 2020 and an expert witness hearing to begin on June 23, 2020. The Scheduling Order also directed that petitions to intervene be filed no later than May 19, 2020. Aqua NC provided notice to each of its affected customers, including Carolina Meadows which contained pertinent information regarding the Company's rate case, including the proposed new rates. The Notice to Customers attached as Appendix A to the Scheduling Order specifically provided that "[t]he Commission may consider additional or alternative rate design proposals that were not included in the original application and may order increases or decreases in the schedules that differ from those proposed by the Applicant." The Notice to Customers also informed customers, among other things, that the Public Staff and the North Carolina Attorney General's Office (AGO) represented them as consumers,

provided contact information for the Public Staff and the AGO, indicated the Commission's deadline for filing petitions to intervene and provided instructions as to filing requirements.

On March 31, 2020, to assist in preventing the spread of coronavirus and in response to Governor Roy Cooper's Executive Order No. 121 imposing a statewide "stay at home" order until April 29, 2020, the Commission issued an order postponing the previously-scheduled public witness hearings pending further order.

On April 29, 2020, the AGO filed a notice of intervention in this docket pursuant to N.C. Gen. Stat. § 62-20. The Public Staff's participation is recognized pursuant to N.C. Gen. Stat. § 62-15.

Between May 12, 2020, and July 8, 2020, the Public Staff filed testimony and exhibits of its witnesses. The parties also filed corrected and revised testimony of their witnesses during the weeks leading up to the hearing on June 23, 2020.

Carolina Meadows did not file a Petition to Intervene by May 19, 2020, or a request for an extension of time to file a Petition to Intervene outside of the allowed time.

On June 11, 2020, Aqua NC filed a Petition for Approval of an Order Allowing Deferral of Revenues in Lieu of Rates Under Bond or, Alternatively, Notice of Intent to Place Temporary Rates in Effect Subject to a Refund Pursuant to N.C.G.S. § 62-135.

On June 23, 2020, at 9:30 a.m., the Commission convened the expert witness hearing in Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, though, due to the State of Emergency relating to COVID-19, promptly recessed the hearing to resume on July 6, 2020, at 1:30 p.m., for the purpose of receiving expert witness testimony by virtual means using the Webex electronic platform. Carolina Meadows did not file a Petition to Intervene nor request an extension of time to file such a petition at any time prior to the beginning of the expert witness hearing.

On June 23, 2020, the Commission issued an order denying use of a revenue deferral mechanism as requested by the Company. Additionally, the Order approved Aqua NC's financial undertaking associated with the institution of partial, temporary rates under bond, finding that Aqua NC's motion satisfied the statutory requirements necessary to place new rates into effect on a partial, temporary basis, subject to refund with interest at a rate of 10% per annum, effective July 30, 2020. The Order also approved the Company's Notices to Customers.

On June 29, 2020, the Commission issued an Order Rescheduling Public Hearings and Requiring Customer Notice. The Order specified that the public hearings would be held in two separate sessions, at 1:30 p.m., and 6:30 p.m. on August 3, 2020, solely for the purpose of receiving the testimony of public witnesses and would be held via virtual means in order to permit customers from all Aqua NC service territories across North Carolina to participate without regard to geographical limitations. The Order required that

the Notice to Customers attached to the Order as Appendix A be mailed with sufficient postage or hand delivered by Aqua NC to all affected customers no later than July 10, 2020. The Notice to Customers provided specific instructions for customers wishing to testify at the public hearings. The Order also required Aqua NC to provide notice of the public hearing to its customers by prominently posting a copy of the Order and Notice to Customers on its website. Aqua NC filed a Certificate of Service attesting that it provided the required Notice to Customers in accordance with the Order.

On July 1, 2020, Aqua NC and the Public Staff entered into and filed a Partial Settlement Agreement and Stipulation (Stipulation). The Stipulation resolved some of the pending issues between those two parties. However, the following issues were not settled: (1) Conservation Pilot Program, (2) rate design, (3) water quality reporting, and (4) the in-service date of plant and Aqua NC's unitization process, further described herein (collectively, the Unsettled Issues).

Also, on July 1, 2020, Aqua NC filed a motion seeking Commission approval of revised Notices to Customers and filed its executed Undertaking to Refund pursuant to N.C.G.S. § 62-135(c). In its motion, Aqua NC sought to implement partial, temporary rates under bond at a lower level than previously requested.

On July 2, 2020, the Commission issued Order Approving Revised Customer Notices and Accepting Financial Undertaking. The Order required that the Notices to Customers attached as Appendices A and B to that Order be mailed with sufficient postage or hand delivered by Aqua NC to the respective customers no later than July 10, 2020 and that Aqua NC file the attached certificate of service properly signed and notarized no later than 20 days following issuance of the Order.

On July 7, 2020, the Public Staff filed the revised billing analysis exhibits of Public Staff witness Junis in support of the agreed-upon revenue requirements presented in the Stipulation. Junis Revised Exhibit 15 stated that "Carolina Meadows Senior Care is recommended to be charged a base facilities charge (BFC) for 186 REUs per month."

The expert witness hearing in this matter resumed on July 8, 2020, by virtual means using the Webex electronic platform. Aqua NC and the Public Staff presented evidence, including expert witness testimony and exhibits, which the Commission admitted in evidence through the course of the expert witness hearing. At the close of the expert witness hearing on July 13, 2020, the proceeding was recessed to be reconvened on August 3, 2020, for the previously scheduled and noticed public witness hearings.

On August 3, 2020, the public witness hearing was held in two sessions as scheduled, with a total of 24 Company customers representing 21 subdivisions testifying. No representatives or customers from Carolina Meadows testified at either of the public witness hearings.

On August 14, 2020, Carolina Meadows filed a Petition for Leave to Intervene Out of Time and for an Order Declaring Invalid the Parties' Partial Settlement Agreement and Stipulation, or in the Alternative, to Open a Complaint Docket Against Aqua North

Carolina, Inc., along with the verified affidavits of Kevin McLeod, President and Chief Executive Officer of Carolina Senior Communities and Services, Inc., the parent corporation and sole member of Carolina Meadows; and William Stannard, PE, a professional engineer and Chairman of Raftelis, a consulting firm that advises utilities and municipalities regarding rate setting, finance, management, and operations.

On August 17, 2020, Aqua NC and the Public Staff filed Initial Proposed Orders, and the AGO filed its Brief as directed by the Presiding Commissioner at the close of the expert witness hearing.

On August 19, 2020, the Commission issued an order establishing September 3, 2020 as the deadline for the parties to file comments on Carolina Meadows' Petition and required Carolina Meadows to file any reply comments no later than five business days following the date the last party files its comments. On September 3, 2020, Aqua NC and the Public Staff filed verified responses to Carolina Meadows' Petition and Carolina Meadows filed reply comments on September 10, 2020.

## **Discussion and Conclusion**

Carolina Meadows' Petition was filed after the conclusion of both the expert witness hearing and the public hearings, on the last business day prior to the deadline for proposed orders and briefs in the case. The petition was filed 87 days after the deadline set for the filing of petitions to intervene.

Commission Rule R1-19 provides an avenue for any person having an interest in the subject matter of any hearing or investigation pending before the Commission to join the action as a party in certain circumstances. Further, Commission Rule R1-19(b) states that:

Petitions under this rule shall be filed with the Commission not less than 10 days prior to the time the proceeding is called for hearing, unless the notice of hearing fixes the time for filing such petitions, in which case such notice shall govern. A petition, which for good cause shown was not filed within the time herein limited, and which neither broadens the issues nor seeks affirmative relief, may be presented to and allowed or denied by the presiding official, in his discretion, at the time the cause is called for hearing.

Carolina Meadows argues that it should not be held to filing deadlines set by the Commission because it was not individually notified by Aqua NC or the Public Staff of the individual impact it would face as a result of the rate case or the Stipulation reached between those parties regarding all but four contested issues in the case and requests that the Stipulation be declared invalid as it regards Carolina Meadows individually. Notice of this general rate case was provided to Aqua NC's customers, including Carolina Meadows, in accordance with the Commission's Scheduling Order. Further notice of these proceedings was given to all customers on at least three occasions prior to the commencement of the expert witness hearing in compliance with the Commission's orders dated March 31, June 29, and July 2, 2020. The customer notices, separately and

together, gave adequate notice to recipients of the nature of the proceedings on Aqua NC's Application. The initial notice to customers informed recipients that the Commission could consider additional or alternative rate design proposals that were not included in the original application and could order increases or decreases in the schedules different from the proposals or requests of the Company. The notice also informed customers that the Public Staff and the AGO were customer representatives and provided contact information for both. In addition, the notice clearly provided instructions on the time for filing petitions to intervene and information on filing requirements.

Based upon the aforementioned, and after carefully considering the Petition, the responsive comments of the parties, the reply comments of Carolina Meadows, and the complete record in this matter, the Presiding Commissioner, in her discretion, finds and concludes that Carolina Meadows has not shown good cause in support of its petition to intervene out of time and after the case was called and heard as prescribed in Commission Rule R1-19. The Presiding Commissioner also finds and concludes that good cause does not exist to set aside or invalidate the Stipulation entered into between Aqua NC and the Public Staff. Thus, Carolina Meadows' petition to intervene and its request that the Commission invalidate the Stipulation will not be allowed.

Carolina Meadows alternatively submitted its Petition as a complaint and requested the Commission to treat its Petition as a complaint against Aqua NC. Having carefully considered the Petition, the responsive comments of the parties, including the request of the Public Staff to treat Carolina Meadows' Petition as a formal complaint pursuant to Commission Rule R1-9, the reply comments of Carolina Meadows, and the complete record in this matter, the Presiding Commissioner finds that good cause exists to grant Carolina Meadows' request to treat its Petition as a customer complaint against Aqua NC regarding the issues raised in its Petition.

IT IS, THEREFORE, ORDERED as follows:

1. That Carolina Meadows, Inc.'s request for leave to intervene out of time shall be, and is hereby, denied;

2. That Carolina Meadows, Inc.'s request for an Order declaring invalid the parties' Stipulation shall be, and is hereby, denied;

3. That Carolina Meadows, Inc.'s Petition for Leave to Intervene Out of Time and for an Order Declaring Invalid the Parties' Partial Settlement Agreement and Stipulation, or in the Alternative, to Open a Complaint Docket Against Aqua North Carolina, Inc., along with the verified affidavits of Kevin McLeod, and William Stannard, PE, shall hereby be treated as a formal complaint against Aqua North Carolina, Inc.;

4. That the Chief Clerk shall open a complaint docket for Carolina Meadows Inc; notify Carolina Meadows, Inc., Aqua North Carolina Inc., the North Carolina Attorney General's Office, and the Public Staff of the new docket number; and copy into said new complaint docket, the following documents from this docket, Docket No. W-218, Sub 526:

- a. Carolina Meadows, Inc.'s Petition for Leave to Intervene Out of Time and for an Order Declaring Invalid the Parties' Partial Settlement Agreement and Stipulation, or, in the Alternative, to Open a Complaint Docket Against Aqua North Carolina, Inc.; Verification and Affidavit of Kevin McLeod; and Affidavit of William Stannard, PE, filed on August 14, 2020;
- b. Order Establishing Dates for Comments on Petition for Leave to Intervene Filed Out of Time by Carolina Meadows, Inc., issued on August 19, 2020;
- c. Verified Comments of the Public Staff Regarding Petition for Leave to Intervene Out of Time by Carolina Meadows, Inc., filed on September 3, 2020;
- d. Verified Response in Opposition to Petition of Carolina Meadows, Inc., filed by Aqua NC on September 3, 2020;
- e. Carolina Meadows, Inc.'s Reply in Support of Its Petition to Intervene; Affidavit of Kevin McLeod; and Supplemental Affidavit of William Stannard, PE, filed on September 10, 2020; and

5. That Carolina Meadows, Inc., shall comply fully with the provisions of N.C.G.S. § 62-73 and Commission Rule R1-9 regarding its complaint against Aqua North Carolina, Inc.

ISSUED BY ORDER OF THE COMMISSION.

This the 24th day of September, 2020.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink that reads "Kimberley A. Campbell". The signature is written in a cursive, flowing style.

Kimberley A. Campbell, Chief Clerk