

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. W-218, SUB 573

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application by Aqua North Carolina, Inc.,)
202 MacKenan Court, Cary, North Carolina)
27511, for Authority to Adjust and Increase) ORDER ON RECONSIDERATION
Rates for Water and Sewer Utility Service in All)
Its Service Areas in North Carolina and for)
Approval of a Water and Sewer Investment Plan)

BY THE COMMISSION: On June 5, 2023, in the above-captioned docket, the Commission issued an Order Approving Partial Settlement Agreement and Stipulation, Deciding Contested Issues, Approving Water and Sewer Investment Plan, Granting Partial Rate Increase, and Requiring Customer Notice (Rate Case Order). In the Rate Case Order, the Commission found that for purposes of establishing rates in Aqua North Carolina, Inc.'s (Aqua's) Water and Sewer Investment Plan (WSIP) period, it is reasonable and appropriate to include in rate base \$353,928 of costs incurred by Aqua in the last quarter of 2022 for PFOS/PFOA¹ projects and \$3,974,325 which represents a portion of the total PFOS/PFOA costs projected by Aqua for Rate Years 1 through 3 as part of the capital projects included in the WSIP. The Commission further concluded that these project costs totaling \$4,328,253 should be included for purposes of calculating WSIP revenue requirements in the Rate Years as follows: Rate Year 1: \$1,328,253; Rate Year 2: \$1,500,000; and Rate Year 3: \$1,500,000. Rate Case Order at 20, 23, 91.

The Commission's Rate Case Order also required Aqua and the Public Staff to work together jointly to file with the Commission, within seven business days of the issuance of the Rate Case Order, the updated Base Case and WSIP Rate Years 1, 2, and 3 revenue requirements reflecting the Commission's decisions; the Schedules of Rates for WSIP Rate Years 1 through 3 for Aqua's five rate divisions; and applicable customer notices. Rate Case Ordering Paragraph Nos. 28-32.

On June 13, 2023, the Public Staff filed a Motion for Reconsideration and for Further Relief (Motion for Reconsideration). The Public Staff requests reconsideration of the Rate Case Order as it relates to the allocation of PFOS/PFOA project costs by rate year and rate division. On June 15, 2023, Aqua filed its Response to the Public Staff's Motion for Reconsideration.

¹ Perfluorooctanesulfonic acid (PFOS) and perfluorooctanoic acid (PFOA) are chemical compounds, which are part of the larger per- and polyfluoroalkyl substances (PFAS) family of compounds.

SUMMARY OF THE PLEADINGS

Public Staff's Motion for Reconsideration

In support of its Motion for Reconsideration, the Public Staff states that after the Commission issued the Rate Case Order, the Public Staff and Aqua exchanged information needed to calculate revenue requirements pursuant to Ordering Paragraph No. 28. The Public Staff indicates that in the course of calculating the revenue requirements, it identified two issues regarding allocation of PFOS/PFOA project costs by rate year and rate division. The Public Staff asserts that the first issue is that the amounts allocated to each Rate Year of the WSIP do not correspond to specific capital projects from the Form W-1, Item 28 that Aqua filed with its WSIP application, which lists all capital projects included in Aqua's WSIP. The Public Staff contends that it cannot calculate revenue requirements for Rate Years 1 through 3 unless PFOS/PFOA capital costs awarded by the Commission are tied to specific projects in Aqua's WSIP.

The second issue identified by the Public Staff is that the Rate Case Order does not specify how the \$4,328,253 in PFOS/PFOA project costs to be included for purposes of calculating revenue requirements should be allocated among Aqua's ANC Water and Brookwood Water rate divisions where the PFOS/PFOA projects included in Aqua's WSIP are located. The Public Staff asserts that it cannot calculate the revenue requirements and design the schedules of rates for Aqua's various rate divisions without this information.

The Public Staff further asserts that if the amounts allowed in rates are not directly tied to specific WSIP projects listed in Aqua's Form W-1, Item 28, including estimated cost, in service date, and rate division, there will likely be complications in implementing the Timely Completion of Capital Investment Plan (CIP) Projects and Completion of CIP Projects on Budget Performance Based Metrics (PBMs) established by the Commission in the Rate Case Order, and in performing the earnings test required as part of the WSIP Annual Review.

The Public Staff requests: (1) that the Commission reconcile the costs for PFOS/PFOA projects it directed to be included for the purposes of calculating revenue requirements and accounted for by the applications for funding from the North Carolina Department of Environmental Quality (NCDEQ) with specific projects listed in the WSIP, thereby allocating the costs by Rate Year and rate division; (2) that the Commission establish a new deadline for filing revenue requirements, and a new deadline (seven business days after the new deadline for filing revenue requirements) for filing the schedules of rates, notices to customers, and other information required to be filed by Ordering Paragraph Nos. 28 through 33 of the Rate Case Order; and (3) for such other relief as the Commission deems just and proper.

Aqua's Response

Aqua disagrees with the Public Staff's contention that the revenue requirement for Rate Years 1 through 3 cannot be calculated without tying PFOS/PFOA capital costs awarded by the Commission to specific projects in Aqua's WSIP. Aqua contends that the calculation of the updated revenue requirements and corresponding schedules of rates can be calculated but the calculation requires the Commission-approved PFOS/PFOA capital balances allowed in rate base for Rate Years 1 through 3 be apportioned between the two affected rate divisions, Aqua ANC Water and Brookwood Water. Aqua asserts that this determination may be accomplished using an allocation methodology and does not require that those capital balances be tied to specific projects within the WSIP, particularly since the project estimates included in the grant application to NCDEQ use current updated (increased) treatment cost estimates that are different (higher) than the estimates included within the WSIP filing. Aqua proposes the following allocation methodology using the original project estimates by Rate Year and rate division:

<u>Form W-1, Item 28</u>	<u>Total</u>	<u>ANC Water</u>	<u>Brookwood</u>
2022 (Rate Yr. 1)	\$460,000	\$110,000	\$350,000
2023 (Rate Yr. 1)	\$2,150,000	\$900,000	\$1,250,000
2024 (Rate Yr. 2)	\$2,900,000	\$1,400,000	\$1,500,000
2025 (Rate Yr. 3)	\$2,300,000	\$800,000	\$1,500,000
WSIP Total	<u>\$7,810,000</u>	<u>\$3,210,000</u>	<u>\$4,600,000</u>
	Rate Division Percentage	41.1%	58.9%

Aqua states that its Form W-1, Item 28 includes PFOS/PFOA project totals by year and rate division only. According to Aqua, Form W-1, Item 28 does not specifically identify the 30 individual site-specific projects and related amounts because prioritizing and making determinations to install treatment at each specific location will be fluid based on factors that will develop and change over the period of the WSIP. Aqua further states that the NCDEQ grant application was filed using site-specific amounts that were originally planned to be completed in 2023 and 2024 and included updated estimated costs. Aqua argues that while the Public Staff desires to have the NCDEQ application amounts applied to offset specific PFAS treatment costs on a project-by-project basis, attempting to apply NCDEQ potential funding against specific balances in Form W-1, Item 28 is not feasible as the projects are not comparable on a one-to-one basis.

Aqua contends that the Public Staff's position essentially serves as a second challenge to inclusion of PFOS/PFOA treatment costs in the WSIP, even though the Rate Case Order in large part ruled in support of Aqua's position requesting recovery of these project costs. Aqua states that the Rate Case Order establishes what the Commission determined to be a reasonable level of PFOS/PFOA project costs for each year of the WSIP term. According to Aqua, it is not necessary to identify separate costs by specific project and specific site, especially given the possibility for offsetting funds from grant applications that were estimated at higher amounts than was included in the WSIP capital

plan and given the need for ongoing testing to determine which PFOS/PFOA treatment projects will get spending priority. Aqua further notes that it sent the Public Staff an appropriate breakdown of the PFAS capital approved per the Rate Case Order, as well as an additional two alternative methods that could be used to effectively allocate PFOS/PFOA treatment costs over the WSIP term between the Aqua ANC Water and Brookwood Water rate divisions. Aqua states that these allocations are sufficient to calculate the revenue requirements and applicable rate designs for each rate division as ordered by the Commission.

Regarding the Public Staff's concern with future reporting on the PBMs for Timely Completion of CIP Projects and Completion of CIP Projects on Budget, Aqua argues that regardless of the distribution of the final Commission approved PFAS project capital, the application of the potential NCDEQ awarded funds has no bearing on the final costs and timeliness of completion for capital projects included in the PBMs.

Aqua requests that the Commission deny the Public Staff's Motion for Reconsideration and order the Public Staff to accept the PFOS/PFOA treatment cost allocations between Aqua's ANC Water and Brookwood Water rate divisions as set forth in Aqua's Response. Because of the delay in determining a revenue requirement and rate schedules, Aqua further requests that the Commission's deadlines in Ordering Paragraph Nos. 28, 29, 30, and 51 of the Rate Case Order be extended to allow a reasonable time for compliance. Aqua suggests that the parties have until June 21, 2023, to reach agreement and file a revenue requirement with the Commission, and then another week to June 28, 2023, to file the various rate schedules, fees, and charges required in Ordering Paragraph Nos. 29 and 30, and that the refund plan in Ordering Paragraph No. 51, if any, be filed within 30 days of the Commission's order approving the customer notices, with the Public Staff's response to the refund plan being due 60 days after the refund plan is filed.

DISCUSSION AND CONCLUSIONS

Pursuant to N.C. Gen. Stat. § 62-80, the Commission has the authority to rescind, alter, or amend any order or decision made by it under appropriate circumstances and with sufficient grounds. The Commission's decision to rescind, alter, or amend an order upon reconsideration under N.C.G.S. § 62-80 is within the Commission's discretion. *State ex rel. Utils. Comm'n v. MCI Telecomms. Corp.*, 132 N.C. App. 625, 630, 514 S.E.2d 276, 280 (1999). However, the Commission cannot arbitrarily or capriciously rescind, alter, or amend a prior order. Rather, there must be some change in circumstances or a misapprehension or disregard of a fact that provides a basis for the Commission to rescind, alter, or amend a prior order. *State ex rel. Utils. Comm'n v. North Carolina Gas Service*, 128 N.C. App. 288, 293-94, 494 S.E.2d 621, 626, *rev. denied*, 348 N.C. 78, 505 S.E.2d 886 (1998).

In the present case, the Commission has fully considered, but is not persuaded by, the Public Staff's assertion that revenue requirements for Rate Years 1 through 3 cannot be calculated unless the PFOS/PFOA capital costs awarded by the Commission

are tied to specific projects in Aqua's WSIP. Instead, the Commission agrees with Aqua that the calculation of the updated revenue requirements and corresponding schedules of rates can be calculated by utilizing an appropriate allocation methodology to apportion the Commission-approved PFOS/PFOA capital balances allowed in rate base for Rate Years 1 through 3 between the two affected rate divisions, ANC Water and Brookwood Water. Aqua has proposed using an allocation methodology based on its original Form W-1, Item 28, PFOS/PFOA project estimates by Rate Year and rate division to distribute the Commission-approved PFOS/PFOA capital balances between rate divisions. Under Aqua's proposal, the percentages determined using the original Form W-1, Item 28 project estimates would be applied to Aqua's proposed PFOS/PFOA projects for each Rate Year, net of estimated funding amounts to be provided by NCDEQ allocated by Rate Year and rate division utilizing these same percentages. Appendix A, attached hereto, sets forth the PFOS/PFOA capital projects approved by the Commission in the Rate Order by Rate Year by rate division utilizing the allocation methodology as proposed by Aqua.

The Commission finds the allocation methodology proposed by Aqua, as set forth herein, and shown in Appendix A, to be reasonable for the reasons articulated by Aqua. First, Aqua's Form W-1, Item 28, includes Aqua's proposed PFOS/PFOA project totals by Rate Year and rate division only. Individual site-specific projects and related amounts were not specifically identified by Aqua because prioritizing and making determinations to install treatment at each specific location will be fluid based on factors that will develop and change over the period of the WSIP. Accordingly, the Commission concludes that it is not necessary to require Aqua to provide more detail than that provided in Aqua's Form W-1, Item 28. Because Aqua cannot identify separate costs by specific project and specific site at this early stage, the Commission concludes it is reasonable to calculate final revenue requirements by rate division by applying an appropriate allocation methodology to the PFOS/PFOA capital balances. Second, Aqua states that the project estimates included in the grant application to NCDEQ use current updated (increased) treatment cost estimates that are different (higher) than the estimates included in the Form W-1, Item 28. Thus, the Commission is persuaded by Aqua's argument that attempting to apply NCDEQ potential funding against specific balances in Form W-1, Item 28 is not feasible as they are not comparable on a one-to-one basis. Based upon the foregoing, the Commission finds good cause to utilize the allocation methodology proposed by Aqua to reconcile the costs of the PFOS/PFOA projects which the Commission directed to be included by Rate Year for the purposes of calculating revenue requirements, including accounting for the two pending applications for funding from NCDEQ. Consequently, the Commission concludes that the \$4,328,253 in PFOS/PFOA project costs to be included for purposes of calculating WSIP revenue requirements

should be allocated between Aqua’s ANC Water and Brookwood Water divisions as follows:

Rate Division	Rate Year 1	Rate Year 2	Rate Year 3	Total
ANC Water	\$416,784	\$824,584	\$471,191	\$1,712,559
Brookwood Water	\$911,469	\$675,416	\$1,028,809	\$2,615,694
Total	\$1,328,253	\$1,500,000	\$1,500,000	\$4,328,253

With regard to the Public Staff’s concern that, if the amounts allowed in rates are not directly tied to specific WSIP projects listed in Aqua’s Form W-1, Item 28, including estimated cost, in service date, and rate division, there will likely be complications in implementing the Timely Completion of CIP Projects and Completion of CIP Projects on Budget PBMs established by the Commission in the Rate Case Order, and in performing the earnings test required as part of the WSIP Annual Review, the Commission finds that Appendix A, attached hereto, provides the same level of project specificity as contained in Aqua’s Form W-1, Item 28. The Commission further finds that as part of the WSIP quarterly reporting requirements, Aqua will provide to the Public Staff and to the Commission status reports by rate division concerning each capital investment project included in the WSIP including, among other things, updated estimated project costs and in service dates for the PFOS/PFOA projects. The Commission concludes that the information contained in Appendix A, supplemented by Aqua’s quarterly WSIP reporting related to these projects, should provide the Public Staff with the information needed to evaluate Aqua’s PBMs and perform its WSIP annual review.

In addition, due to the parties’ disagreement and resulting delay in determining the revenue requirements and filing the rate schedules, the Commission finds good cause to extend the deadlines for filing revenue requirements, schedules of rates, notices to customers, and other information required to be filed by Ordering Paragraph Nos. 28 through 32, and 51 of the Rate Case Order.

IT IS, THEREFORE, ORDERED as follows:

1. That the allocation methodology proposed by Aqua to apportion the Commission-approved PFOS/PFOA project costs by Rate Year by rate division as discussed herein and set forth in Appendix A, attached hereto, shall be, and hereby is, approved;

2. That Findings of Fact Nos. 65(b) and 84 of the Rate Case Order shall be amended to specify the costs by rate divisions for the Commission-approved PFOS/PFOA projects by Rate Year. That PFOS/PFOA project costs totaling \$4,328,253 shall be included for purposes of calculating revenue requirements in the Rate Years as

follows: Rate Year 1: \$1,328,253; Rate Year 2: \$1,500,000; and Rate Year 3: \$1,500,000. The amounts per Rate Year by rate division shall be as follows:

Rate Division	Rate Year 1	Rate Year 2	Rate Year 3	Total
ANC Water	\$416,784	\$824,584	\$471,191	\$1,712,559
Brookwood Water	\$911,469	\$675,416	\$1,028,809	\$2,615,694
Total	\$1,328,253	\$1,500,000	\$1,500,000	\$4,328,253

3. That the deadline established in Ordering Paragraph No. 28 of the Rate Case Order shall be extended to on or before June 26, 2023;

4. That the deadline established in Ordering Paragraph Nos. 29, 31, and 32 of the Rate Case Order shall be extended to on or before July 3, 2023;

5. That the deadline established in Ordering Paragraph No. 30 of the Rate Case Order shall be extended to on or before July 6, 2023;

6. That the refund plan, if any, referred to in Ordering Paragraph No. 51 of the Rate Case Order shall be filed by Aqua within 30 days of the issuance date of the Commission's order approving the customer notices required by Ordering Paragraph No. 30. That the Public Staff shall file a response to said refund plan no later than 60 days after the refund plan is filed by Aqua; and

7. That, except as amended herein, the Rate Case Order issued on June 5, 2023, in this docket, shall remain in full force and effect.

ISSUED BY ORDER OF THE COMMISSION.

This the 21st day of June, 2023.

NORTH CAROLINA UTILITIES COMMISSION



A. Shonta Dunston, Chief Clerk

Commissioner Floyd B. McKissick, Jr. did not participate in this decision.

Aqua North Carolina, Inc.
Docket No. W-218, Sub 573
PFOS/PFOA Capital Projects By Rate Division

Appendix A

	Rate Year 1	Rate Year 2	Rate Year 3	Total
Commission-approved PFOS/PFOA Capital Projects per June 5, 2023 Rate Case Order	<u>\$ 1,328,250</u>	<u>\$ 1,500,000</u>	<u>\$ 1,500,000</u>	<u>\$ 4,328,250</u>
By Rate Year, By Rate Division:				
ANC Water Rate Division - Total	\$ 416,783	\$ 824,584	\$ 471,191	\$ 1,712,557
PFOS/PFOA - Denver (202312)	416,783			
PFOS/PFOA - Denver (202409)		324,584		
PFOS/PFOA - Kemersville (202410)		500,000		
PFOS/PFOA - Denver (202511)			471,191	
Brookwood Water Rate Division - Total	\$ 911,467	\$ 675,416	\$ 1,028,809	\$ 2,615,693
PFOS/PFOA - BKWD Well #34 (202210)	353,928			
PFOS/PFOA - BKWD Comm (202310)	557,539			
PFOS/PFOA - BKWD Comm (202410)		675,416		
PFOS/PFOA - BKWD Comm (202511)			1,028,809	
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	Rate Year 1	Rate Year 2	Rate Year 3	Total
NCDEQ Funding - Allocation	<u>\$ (1,175,678)</u>	<u>\$ (1,400,000)</u>	<u>\$ (800,000)</u>	<u>\$ (3,375,678)</u>
ANC Water Rate Division - Allocated 41.1% (see below)				
PFOS/PFOA - Denver (202312)	(483,217)			
PFOS/PFOA - Denver (202409)		(575,416)		
Total ANC Water	<u>\$ (483,217)</u>	<u>\$ (575,416)</u>	<u>\$ (328,809)</u>	<u>\$ (1,387,443)</u>
Brookwood Water Rate Division - Allocated 58.9% (see below)				
PFOS/PFOA - BKWD Comm (202310)	(692,461)			
PFOS/PFOA - BKWD Comm (202410)		(824,584)		
PFOS/PFOA - BKWD Comm (202511)			(471,191)	
Total Brookwood Water	<u>\$ (692,461)</u>	<u>\$ (824,584)</u>	<u>\$ (471,191)</u>	<u>\$ (1,988,235)</u>
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Aqua's Updated Form W-1, Item 28-PFOS/PFOA Capital Projects	\$ 2,503,928	\$ 2,900,000	\$ 2,300,000	\$ 7,703,928
Estimated NCDEQ Funding by Year	<u>\$ (1,175,678)</u>	<u>\$ (1,400,000)</u>	<u>\$ (800,000)</u>	<u>\$ (3,375,678)</u>
Per Commission Order-PFOS/PFOA Capital Projects	<u>\$ 1,328,250</u>	<u>\$ 1,500,000</u>	<u>\$ 1,500,000</u>	<u>\$ 4,328,250</u>
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Allocation Percentage - Based on Form W-1, Item 28 Application Filing for PFOS/PFOA Projects				
ANC Water Rate Division	\$ 3,210,000	41.1%	41.1%	
Brookwood Water Rate Division	<u>4,600,000</u>	58.9%	58.9%	
	<u>\$ 7,810,000</u>			