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September 8, 2023

Via Electronic Submittal

Ms. A. Shonta Dunston  
Chief Clerk  
North Carolina Utilities Commission  
430 N. Salisbury Street, Room 5063  
Raleigh, NC 27603

**Re: In the Matter of**  
**Application by Aqua North Carolina, Inc. for Authority to Transfer the**  
**Northgate Water System to the Town of Fuquay-Varina via Lear**  
**Corporation**  
**Docket No. W-218, Sub 551**  
***Settlement Agreement and Stipulation to Allow Recovery of Loss on Sale***  
***(Public)***

Dear Ms. Dunston:

On behalf of Aqua North Carolina, Inc. ("Aqua"), I herewith provide for filing in the above referenced docket, Settlement Agreement and Stipulation to Allow Recovery of Loss on Sale.

If you should have any questions concerning this filing, please let me know.

Thank you and your staff for your assistance.

Sincerely,  
*/s/ David T. Drooz*  
David T. Drooz  
Attorney for  
Aqua North Carolina, Inc.

pbb

A Pennsylvania Limited Liability Partnership

California Colorado Delaware District of Columbia Florida Georgia Illinois Minnesota Nevada  
New Jersey New York North Carolina Pennsylvania South Carolina Texas Virginia Washington



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Enclosures

Copy to: Megan Jost, NC Public Staff  
Parties and Counsel of Record

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**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. W-218, SUB 551

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 Transfer the Northgate	)
Water System to the Town of Fuquay-Varina	)
via Lear Corporation	)
	SETTLEMENT AGREEMENT AND STIPULATION TO ALLOW RECOVERY OF LOSS ON SALE

Aqua North Carolina, Inc. (Aqua or Company), through counsel, and the Public Staff – North Carolina Utilities Commission (Public Staff), through its Executive Director, Christopher J. Ayers, (collectively, the Stipulating Parties), pursuant to N.C. Gen. Stat. § 62-69 and Commission Rule R1-24(c), respectfully submit the following Stipulation on Recovery of Loss on Sale (Stipulation) to the North Carolina Utilities Commission (Commission) in this transfer proceeding. The Stipulating Parties hereby stipulate and agree as follows.

**I. BACKGROUND**

- A. Aqua filed an application requesting approval from the Commission for the installation of an iron and manganese filtration system at Northgate Well #1, which was approved in an Order issued January 18, 2017, in Docket No. W-218, Sub 363A.

- B. Northgate Well #1 is located near the former Guilford Fibers Facility (Facility), currently owned by the Lear Corporation (Lear), which is subject to a Remedial Action Plan between Lear and the Department of Environmental Quality's Division of Waste Management.
- C. Lear initiated efforts to negotiate a multi-party settlement agreement (Agreement) between itself, the Northgate Homeowners Association (HOA), the Town of Fuquay-Varina (Town), and Aqua to address concerns related to potential future contamination.
- D. Aqua placed the installation of the Northgate filtration system project on hold as the Agreement was being negotiated.
- E. The Agreement was entered into on May 5, 2021.
- F. On October 6, 2021, Aqua filed its Application to transfer its water system serving the Northgate subdivision to the Town. A copy of the Agreement was filed confidentially in this docket along with the Application on October 6, 2021.

Under the Agreement, Aqua would [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- I. Aqua received approval from the Department of Environmental Quality to deactivate the system effective April 28, 2022, the same date the Town started providing service to Northgate.
  - J. While Aqua would be transferring its Northgate water system assets to Lear, neither the Agreement nor the Application in this docket contemplate that Lear would acquire a Certificate of Public Convenience and Necessity. Rather, the new service provider would be the Town and therefore the effect of the Agreement is a transfer to an owner exempt from Commission regulation.
  - K. The Agreement acknowledges that Aqua's obligations to sell and close its water system are conditioned upon Aqua obtaining all regulatory approvals necessary to allow Aqua to transfer the Aqua Northgate Assets to Lear, including, an order from the North Carolina Utilities Commission (NCUC), with terms and conditions acceptable to Aqua providing approval for Aqua to discontinue water service to Northgate and to transfer the obligation to serve its Northgate customers to the Town.
  - L. The Agreement is not fully executed and Aqua has not received the final agreed upon consideration from Lear as these requirements have not yet been met.

- M. The Public Staff and Aqua both support the transfer as serving the public interest. The quality of water provided through the Town's water system is better than the well sources within the community.
- N. The Public Staff and Aqua agree that the cost recovery terms documented within this Stipulation, provides a reasonable option to address the Northgate water quality concerns for the Northgate residents and Aqua's remaining consolidated water customers.
- O. After settlement negotiations, in which concessions from their litigation positions were made by both parties, the Stipulating Parties were ultimately able to arrive at a settlement, the terms of which are reflected in the following sections of this Stipulation.

## II. COST RECOVERY

The Stipulating Parties agree and stipulate that Aqua should be authorized to recover its costs of transfer as detailed below:

- A. Basis for Recovery of Abandonment Loss and Closing and Abandonment Costs. Historically, gain or loss on sale of utility assets for an entire system was assigned to the utility's shareholders; however, in compelling circumstances an exception may be justified for public policy reasons. See Order Determining Regulatory Treatment of Gain on Sale, issued December 23, 2011, in Docket No. W-354, Sub 331, *affirmed State ex rel. Utilities Commission v. Carolina Water Service, Inc. of North Carolina*, 225 N.C. App 120

(2013). In the present case, the following compelling circumstances exist to support Aqua's recovery of its loss on sale:

(i) the type of contamination of the well water presents a public health hazard;

(ii) Aqua is not at fault for that contamination;

(iii) providing water utility service through the Town, which has a different water source, is the most cost-effective path to providing acceptable water quality to the Northgate customers;

(iv) A Northgate customer using 5,000 gallons of water monthly will pay the Town a monthly bill of \$47.59,<sup>1</sup> compared to a monthly bill of \$63.50 for the same monthly usage under Aqua's water rates from Docket No. W-218, Sub 573; and

(v) the Northgate customers will not have to pay for extending the Town's distribution system to serve them, nor will they have to pay connection costs to the Town;

(vi) Aqua voluntarily participated in the Agreement that requires transfer of Aqua's Northgate water system assets to the Town via Lear, in lieu of investing additional monies on a treatment system that would otherwise increase rate base, operating expense, Aqua's net income and, resultingly, rates for its consolidated customers.

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<sup>1</sup> Per the [Water-Sewer-Fee-Schedule-PDF \(fuquay-varina.org\)](https://fuquay-varina.org/Water-Sewer-Fee-Schedule-PDF)

B. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

C. Closing and Abandonment Costs. The Public Staff agrees that Aqua may recover up to \$15,000 of prudently incurred closing and abandonment costs. The actual amount of closing and abandonment costs and supporting invoices will be submitted upon their completion and receipt by Aqua to the Public Staff and the Public Staff will either verify that \$15,000 of that amount was prudently incurred, or if the Parties disagree that \$15,000 of closing and abandonment costs was prudently incurred, they may submit their respective positions to the Commission for decision in the next general rate case proceeding, or as otherwise ordered by the Commission.

D. Items included in Subsection B and C above shall be included as loss on sale and abandonment of system, with amortization over a 10-year period, beginning at the effective date of rates approved in Aqua's next general rate case, and no return calculated on the unamortized balance.



### **III. AGREEMENT TO SUPPORT SETTLEMENT; NON-WAIVER**

- A. The Stipulating Parties will act in good faith to support the reasonableness of this Stipulation in any hearing before the Commission and any proposed order or brief in this docket. The Stipulating Parties further agree that this Stipulation is in the public interest.
- B. The terms of this Stipulation are specific to the facts of this proceeding and shall not be cited as precedent by any of the Stipulating Parties in any other proceeding or docket before this or any other Commission or in any court. The provisions of this Stipulation do not necessarily reflect any position asserted by any of the Stipulating Parties. Rather, they reflect settlement among the Stipulating Parties as to all issues, and no Stipulating Party waives any right to assert any position in any other pending or future proceeding or docket before this or any other Commission or in any court except insofar as the Commission is addressing litigation arising out of the implementation of the terms herein or the approval of this Stipulation.

### **V. STIPULATION BINDING ONLY IF ACCEPTED IN ITS ENTIRETY**

This Stipulation is the product of negotiation and compromise of a complex issue, and no portion of this Stipulation is or will be binding on either of the

Stipulating Parties unless the entire Settlement Agreement and Stipulation is accepted by the Commission. If the Commission rejects any part of this Stipulation or approves this Stipulation subject to any change or condition, or if the Commission's approval of this Stipulation is rejected or conditioned by a reviewing court, the Stipulating Parties agree to meet and discuss the applicable Commission or court order within five business days of its issuance and to attempt in good faith to determine if they are willing to modify the Stipulation consistent with the order. No Stipulating Party shall withdraw from the Stipulation prior to complying with the foregoing sentence. If any Stipulating Party withdraws from the Stipulation, each Stipulating Party retains the right to seek additional procedures before the Commission, including cross-examination of witnesses, with respect to issues addressed by the Stipulation and shall not be bound or prejudiced by the terms and conditions of the Stipulation.

## **VI. COUNTERPARTS**

This Stipulation may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute the same instrument. Execution by facsimile signature shall be deemed to be, and shall have the same effect as, execution by original signature.

The foregoing is agreed and stipulated to this the 8th day of  
September, 2023.

**Electronically Submitted**

**Aqua North Carolina, Inc.**

**By: /s/ David T. Drooz**

Fox Rothschild, LLC

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**Public Staff – North Carolina Utilities  
Commission**

**By: /s/ Christopher J. Ayers**

Executive Director, Public Staff

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**CERTIFICATE OF SERVICE**

It is hereby certified that the foregoing Settlement Agreement and Stipulation to Allow Recovery of Loss on Sale, filed on behalf of Aqua North Carolina, Inc., and the Public Staff – North Carolina Utilities Commission, has been this day served upon parties and counsel of record and the NC Public Staff by e-mail / electronic transmission or by deposit of same in the U. S. Mail, postage prepaid.

This 8th day of September, 2023.

By: /s/ David T. Drooz  
David T. Drooz  
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