

SANFORD LAW OFFICE, PLLC
Jo Anne Sanford, Attorney at Law

September 3, 2020

Ms. Kimberley A. Campbell, Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4325

Via Electronic Delivery

Re: Aqua North Carolina, Inc.
Docket No. W-218, Sub 526 – General Rate Case
Verified Response in Opposition to Petition of Carolina Meadows, Inc.

Dear Ms. Campbell:

Attached please find Aqua North Carolina, Inc's *Verified Response in Opposition to Petition of Carolina Meadows, Inc.*

Aqua requests that this Verified Response be admitted in evidence in this proceeding.

Additionally, Aqua wishes to advise the Commission and the parties of its intention to request adjustment of the legal fee component of its rate case expenses in this case, given the requirement of responding to the unanticipated Carolina Meadows Petition to Intervene/Complaint. In that the course and manner of disposition of this dispute is currently unknown, the Company requests leave to present for inclusion in rates its legal fees for this portion of the case at the conclusion of the matter.

As always, we thank you and your staff for your assistance; please feel free to contact me if there are questions or if additional information is required.

Electronically Submitted

/s/Jo Anne Sanford

North Carolina State Bar No. 6831

Attorney for Aqua North Carolina, Inc.

c: Parties of Record and Carolina Meadows, Inc.

Carolina Meadows Senior Care facility, the Camden Apartment complex, a commercial area, and single-family residences.

At the time Aqua closed on the purchase of the Carolina Meadows WWTP in January 2006, the plant had the capacity to treat 180,000 gpd of wastewater and a rate base value of \$357,578 as determined by the Commission in the Sub 216 Order Approving Transfer.² Section 1.3(d) of the Asset Purchase Agreement that Aqua signed with Carolina Meadows required the Company to install a sewer meter measuring incoming flow from the Carolina Meadows Community and to provide the meter reading to the customer with each billing. Aqua in fact installed a 6-inch sewer meter and has used that type of meter to calculate monthly usage charges billed to Carolina Meadows.

Section 6.(g) of the Asset Purchase Agreement also required Aqua to pay for and construct a replacement or upgraded plant with a treatment capacity of 350,000 gallons per day in accordance with plans and specifications and a construction schedule to be approved prior to Closing. Aqua in fact upgraded the Carolina Meadows WWTP to a treatment capacity of 350,000 gpd in 2008, at a cost of approximately \$2.8 million.

Under the Asset Purchase Agreements that Aqua signed with Chatham Water and Carolina Meadows in May 2005 and June 2005, respectively, Aqua took ownership and responsibility for operating the Carolina Meadows WWTP and also a portion of the collection system then owned by Carolina Meadows; i.e., two pump

² See Finding of Fact No 6 and Ordering Paragraph No. 5 of the Sub 216 Order Approving Transfer.

stations and the force mains which connect that customer to the WWTP.³ Carolina Meadows continues to own, maintain, and operate the remainder of the collection system within its boundaries.

The Carolina Meadows Senior Care facility is a 168-acre development with 287 one- and two-bedroom homes, 162 one- and two-bedroom apartments, 169 assisted living and nursing home beds with laundry, and a beauty shop. The information for the current facilities at Carolina Meadows was provided to Aqua by Mr. Camara, the Vice President of Plant Operations. Using the applicable facility design flowrate values prescribed by 15A NCAC 02T .0114 of 240 gallon per day per dwelling unit minimum, 120 gallons per bed for nursing home beds, and 125 gallons per bowl for the beauty shop produces the following result: the total contributory design flow for the Carolina Meadows Senior Care facility is 128,665 gpd. The total contributory design flow for all customers served by the Carolina Meadows WWTP is 391,669 gpd.

The Carolina Meadows Senior Care facility represents approximately 33% (128,665 gpd/391,669 gpd = 32.9%) of the total wastewater flow entering the Carolina Meadows WWTP based on design flows calculated in accordance with 15A NCAC 02T .0114 and approximately 38% of the total wastewater flow based on metered values.

Based on the current total of 586 REUs used to design Base Facilities Charges (BFCs) for all customers served by the Carolina Meadows WWTP, the

³ The two pump stations are vacuum cleaned by Aqua approximately every two months due to accumulation of non-flushable items. In addition, each pump station is inspected at least weekly and they are continuously monitored via remote telemetry.

Carolina Meadows Senior Care facility pays a BFC based on 50 REUs which equates to only 8.5% of the total customer BFC REUs. Under the stipulated proposed rate design of 186 REUs used to calculate the new proposed Base Facilities Charge, the Carolina Meadows Senior Care facility would pay a BFC which equates to 25.8% (186 REUs/722 REUs) of the total customer BFC REUs. Thus, the stipulated BFC calculation based on 186 REUs proposed for Carolina Meadows in this case is still far lower on a percentage basis than the actual flow and design flow wastewater treatment percentages applicable to this customer. Although the consolidated sewer revenue requirement and rate design for the Aqua Sewer Uniform Rate Division considers costs and contributions from customers in various systems, these statistics support the reasonability and prudence of the Base Facilities Charge based on 186 REUs proposed in this case by Aqua and the Public Staff.

In addition, since acquiring the Carolina Meadows WWTP in January 2006, Aqua has invested a total of approximately \$4.7 million (net of retirements) at that facility. More specifically, Aqua invested approximately \$2.8 million to expand the Carolina Meadows WWTP in 2008, and approximately \$1.7 million to rehabilitate and upgrade the WWTP in 2018. Under the Stipulation with the Public Staff, the Company's rate base for the Carolina Meadows WWTP in the pending Sub 526 rate case was established to be \$3,935,686 as of September 30, 2019.⁴ Thus, since Aqua's acquisition of the Carolina Meadows WWTP, the Company's investment in rate base at that facility has increased by a factor that is more than

⁴ See Public Staff Henry Exhibit I, Schedule 2-6 Revised 08/17/20 and Exhibit I, Schedule 2.6(a) Revised 08/17/20 (Page 1 of 2).

ten times larger than the initial rate base value of \$357,578 determined by the Commission in the Sub 216 Order Approving Transfer. In addition, as previously stated, the Company also has a rate base investment in a portion of the collection system necessary to serve Carolina Meadows.

The Pending Sub 526 General Rate Case

Aqua herein provides a discussion of relevant information pertaining to the Company's pending rate case as it pertains to Carolina Meadows and its Petition and a discussion of the Company's rationale by which it opposes the Petition and requests that it be denied in its entirety.

Aqua filed its pending Sub 526 general rate case on December 31, 2019. By its Sub 526 Rate Case Application and proposed Schedule of Rates (Exhibit O, page 7 of 11), Aqua proposed the following commercial sewer rates for all of the Company's service areas unless noted differently: Base Facilities Charge for a 6-inch meter of \$1,374.00 and a usage rate of \$10.54 per 1,000 gallons. There was no mention of Carolina Meadows in the proposed Schedule or Rates which treated Carolina Meadows differently.

On February 14, 2020, the Commission entered its Scheduling Order in the Sub 526 rate case docket. By that Order, Aqua was required to mail a 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 to the Scheduling Order as Appendix A, set forth (at page 4 of 9) the commercial sewer rates requested by Aqua for all of its service areas (unless noted differently), including both the

proposed new Base Facilities Charge for a 6-inch meter of \$1,400.00 and a usage rate of \$8.46 per 1,000 gallons. There was no specific mention of Carolina Meadows in the Notice to Customers.

The Notice to Customers attached as Appendix A to the Commission's Sub 526 Scheduling Order (which was mailed to Carolina Meadows) also specifically provided (at page 5 of 9) that "The 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. However, any rate structure considered will not generate more overall revenues than requested."

Aqua did not include an excess capacity adjustment as part of its Sub 526 Rate Case Application for any of its WWTPs, including the Carolina Meadows WWTP. However, when the Public Staff filed the testimony of its witness Charles M. Junis, the Staff proposed an excess capacity adjustment of 33.03% applicable to the Company's entire investment in the Carolina Meadows WWTP, as well as adjustments to two additional Aqua WWTPs. Company witnesses Shannon Becker and Joseph Pearce presented rebuttal testimony and exhibits in opposition to the Public Staff's proposed excess capacity ratemaking adjustment.

Carolina Meadows, Inc., like all water and/or sewer customers served by Aqua, was served with a copy by United States Mail of the Commission-prescribed Notice to Customers which provided formal notice that the Company filed a general rate case with the Commission in this docket on December 31, 2019.⁵ In pertinent

⁵ The Commission-prescribed Notice to Customers was appended to the Scheduling Order issued by the Commission in this docket on February 14, 2020.

part, the Notice contained the following relevant information: a detailed listing of the Company's existing and proposed water and sewer rates; a listing of the dates, times, and locations of public hearings to receive testimony from public witnesses (customers);⁶ contact information for both the Public Staff and the Attorney General and identification of them as consumer representatives; a description of the date of commencement, time, and location of the evidentiary hearing to receive testimony from expert witnesses sponsored by the Company, the Public Staff, and any other intervenors; notice that petitions to intervene as formal parties of record were required to be filed no later than Tuesday, May 19, 2020,⁷ along with instructions as to filing requirements; notice that information regarding this proceeding could be accessed from the Commission's website at www.ncuc.net under the docket number; and that pursuant to G.S. 62-135, Aqua intended to implement its proposed rates under bond on a temporary, interim basis subject to refund, effective for service rendered on and after six months from January 30, 2020.

Carolina Meadows did not file a Petition to Intervene by the Commission-ordered due date of May 19, 2020.

In their joint rebuttal testimony, which was filed on June 13, 2020, witnesses Becker and Pearce testified that their analysis of the excess capacity issue, which involved an evaluation of the Carolina Meadows WWTP's contributory design flow,

⁶ On March 31, 2020, the Commission entered an Order in this docket postponing the public witness hearings pending further order of the Commission due to the Coronavirus pandemic.

⁷ The Order Granting Extension of Time to File Testimony entered by the Commission in this docket on May 14, 2020, did not extend the date for intervenors to file petitions to intervene.

established that no such adjustment was appropriate.⁸ Becker/Pearce Rebuttal Exhibit 5 (and the narrative prefiled rebuttal testimony at page 16 of 27) indicates that the Carolina Meadows WWTP current contributory design flow is 391,669 gallons per day (gpd) for a 350,000 gpd facility. The specifics of Aqua's design flow calculations for the Carolina Meadows WWTP were described on pages 17 through 20 of the Becker/Pearce prefiled rebuttal testimony.

On June 29, 2020, the Commission entered an Order in this docket rescheduling two sessions of public hearings to be held by virtual means on the afternoon and evening of August 3, 2020. The Commission's Order also required Aqua to mail a prescribed Notice to Customers which provided all pertinent details regarding the rescheduled virtual public hearings. Again, Carolina Meadows, like all water and/or sewer customers served by Aqua, was served with a copy by United States Mail of the Commission-prescribed Notice to Customers.

Prior to the start of the evidentiary hearing in the Sub 526 rate case, Aqua and the Public Staff commenced settlement discussions, which were sometimes attended by the Attorney General's Office (AGO). The Company and the Public Staff ultimately reached a settlement of many of the rate case issues, including all of the accounting or ratemaking issues. One of the more important and contentious of those settled issues involved the Public Staff's proposed WWTP excess capacity adjustment. In addition, there are four issues which were

⁸ As an essential part of Aqua's analysis regarding the contributory design flow of the Carolina Meadows WWTP, Mr. Pearce contacted Mr. Dan Camara, the Carolina Meadows Vice President of Plant Operations, by telephone and email on May 20, 2020, requesting detailed facility-specific information necessary to document the WWTP contributory design flow. On May 21, 2020, Mr. Camara provided the detailed information requested by Mr. Pearce. That information was used by Aqua to develop the Company's position as set forth in the Becker/Pearce rebuttal testimony in opposition to the Public Staff's proposed excess capacity ratemaking adjustment.

unresolved by the partial settlement. The unresolved issue most relevant to the Carolina Meadows Petition is rate design, which will be decided by the Commission. The Partial Settlement Agreement and Stipulation (Stipulation) signed by the Company and the Public Staff was filed with the Commission on July 1, 2020.

Paragraph U at page 9 of the Stipulation provides, in pertinent part, that no excess capacity ratemaking adjustment should be made in this rate case related to Aqua's wastewater treatment plants which serve the Company's Carolina Meadows, The Legacy, and Westfall service areas. That part of the Stipulation was premised on and supported by the rebuttal testimony and exhibits jointly presented by Company witnesses Becker and Pearce.

Based on their settlement discussions regarding excess capacity, Aqua and the Public Staff came to the realization and understanding that the Base Facilities Charge applicable to the 6-inch sewer meter serving Carolina Meadows had been, in the first instance, incorrectly designed and calculated as if it was a 6-inch water meter based on 50 residential equivalent units (REUs).⁹ The evidence in the Becker/Pearce testimony and exhibits demonstrated that the 6-inch meter in place is a sewer meter and not a water meter so the assumed 50 water REUs are not applicable, and there are actually 372 REUs of wastewater treatment demand feeding the 6-inch sewer meter at the Carolina Meadows WWTP. The 372 REUs

⁹ The Carolina Meadows WWTP is the only WWTP owned and operated by Aqua which measures wastewater intake and the customer's usage through a 6-inch sewer meter. Thus, the stipulated Base Facilities Charge calculated on the basis of 186 REUs applies only to Carolina Meadows and no other Aqua sewer customers.

of wastewater treatment demand is calculated as the sum of all water meters, except irrigation meters, that serve the Carolina Meadows campus.

Because of the significant impact that the use of 372 REUs would have on the magnitude of a recomputed Base Facilities Charge to be paid by Carolina Meadows, Aqua and the Public Staff agreed that, in order to minimize rate shock in this case, the applicable Base Facilities Charge should be based upon a reduced number of REUs (50% of the current 372 or 186).

The rate design settlement between Aqua and the Public Staff regarding the determination to use 186 REUs (50% of 372 REUs) to calculate the Carolina Meadows Base Facility Charge in this case was not directly related to the stipulated settlement of the contested excess capacity issue. Issues related to WWTP excess capacity have been ongoing for many years in Aqua rate cases and the Company's objective in this case was to once again (and hopefully for the last time) successfully contest that issue based upon new evidence; the Company had no other purpose in mind. It was only after reaching a settlement on the excess capacity issue and through further discussions that Aqua and the Public Staff recognized that modifications were also necessary and required to correct and properly calculate the Base Facilities Charge to serve Carolina Meadows along with the overall sewer rate design.

At the evidentiary hearing session conducted on July 9, 2020, Public Staff witness Junis testified as follows regarding the stipulated Base Facilities Charge settlement as it pertains to Carolina Meadows:

Through rebuttal discovery, Carolina Meadows Senior Care Facility was found to receive water service from Chatham County through

264 - 5/8-inch meters, 6 - 2-inch meters, and 4 - 3-inch meters, after excluding dedicated irrigation meters (equivalent to 372 residential equivalent units, or REUs). Since the Sub 363 rate case, this customer was designed to be billed based on a 6-inch wastewater meter or 50 REUs, which significantly underrepresented the design flow demand of the customer and resulted in a low base facility charge. In consideration of the magnitude and suddenness of the rate change, the Stipulating Parties have agreed that the Carolina Meadows Senior Care will be billed a base facility charge for 50 percent, or 186 REUs, until the next general rate case. The Public Staff would then recommend full implementation of a base facility charge for 372 REUs.¹⁰

On July 10, 2020, Mr. Pearce sent an email to Dan Camara, Carolina Meadows' Vice President of Plant Operations, providing the details of the settlement's impact on the additional sewer rates proposed to be paid by Carolina Meadows in the rate case (approximately \$3,700 per month) and advised him of the opportunity to provide comments to the Commission during the customer hearings scheduled for August 3, 2020. Thus, Mr. Camera and Carolina Meadows were provided notice of the proposed rate impact and the date of the rate case public hearings by Mr. Pearce on behalf of Aqua 21 days prior to those hearings.¹¹ Mr. Pearce concluded his email by stating that: "As this rate case may have significant impact on your charges, I wanted to ensure you were aware of this rapidly moving issue and have the fullest opportunity to comment to the NCUC."

On July 21, 2020, Mr. Pearce sent Mr. Camara another email containing specific details of the Public Staff's rate design proposal and the rate impact

¹⁰ NOTE: This quote from Public Staff witness Junis' testimony was taken from his written summary which was distributed at the evidentiary hearing. The Official Transcript of this portion of witness Junis' testimony contains errors which were not recognized until this pleading was drafted. Aqua also notes that the Chatham County meters referenced by witness Junis in his above-quoted testimony are water meters.

¹¹ Aqua also notes that the evidentiary hearings were still underway on July 10, 2020, when Mr. Pearce contacted Mr. Camara and that those hearings did not conclude until July 13, 2020.

(approximately \$45,000 per year) as it affected Carolina Meadows in both Aqua's Sub 526 rate case and the Company's next rate case. Mr. Camara responded by email that same day to Mr. Pearce, stating that "...With the potential impact of these proposed rates being so substantial, I'm looping in our CEO, COO & CFO, Kevin McLeod,¹² Ben Cornthwaite & Gary Levine, respectively..." Thus, Mr. Camera and other corporate officers at Carolina Meadows were provided additional notice of the specific dollar implications of the new rate design thirteen days prior to the customer public hearings.

Carolina Meadows did not offer any testimony at the virtual public hearings held on August 3, 2020. Aqua took reasonable steps to timely provide written notification to Carolina Meadows of the newly-stipulated Base Facilities Charge rate design, including the magnitude thereof, in sufficient time for the customer to, at the very least, provide testimony at one of the Commission's public hearing sessions held on August 3, 2020. Thus, Carolina Meadows knowingly passed up an opportunity to testify before the Commission and enter, as part of the evidentiary record, its concerns and objections to the stipulated rate design. After failing to take that course of action, Carolina Meadows subsequently filed its "Out-of-Time" Petition and supporting affidavits on August 14, 2020, eleven days after the close of the evidentiary and public hearings in this case and 35 days after Aqua first provided written notification to Mr. Camara of both the impact of the stipulated rate design and the date of the public hearings.

¹² Kevin McLeod is Carolina Meadows' President and CEO.

Aqua asserts that the relief sought by Carolina Meadows in its Petition, including the alternative request to open a complaint docket, is unreasonable based on the facts of this case and should be denied for the reasons set forth above. For many years, Aqua erroneously failed to charge a Base Facilities Charge to Carolina Meadows; a great benefit for the customer and a significant financial detriment to the Company.¹³ In addition, the Company's rates have, for many years, reflected significant ratemaking penalties for excess capacity plant adjustments applicable to the Carolina Meadows WWTP; a great benefit to Carolina Meadows, as well as the consolidated sewer customers, and a significant financial detriment to Aqua. Based on the new evidence presented by Aqua in this case, the Company asserts that there is a likelihood that those excess capacity ratemaking adjustments were never fully warranted and were based on faulty evidence, assumptions, and standards; thereby denying the Company recovery in rates of a return on the excluded investment and the applicable depreciation. Aqua can never make up this financial deficit.

The decision to stipulate that no WWTP excess capacity adjustment should be made in this case served to uncover and point out the previously unrecognized fact that the Base Facilities Charge applicable to Carolina Meadows sewer meter has been significantly understated and miscalculated for many years and needs to be revised to accurately reflect the 372 REUs of demand which it actually serves. This is not unfair to Carolina Meadows, particularly in view of the stipulated rate

¹³ Paragraph 30 of Appendix A attached to this Verified Response indicates that, during the approximate 70-month period of time from May 2014 through February 2020, Carolina Meadows was underbilled in the total amount of approximately \$83,300 as a result of the Company not billing this customer the Commission-approved Monthly Base Facilities Charges.

design to only charge the customer based on 50% or 186 of the 372 REUs in this case. Aqua admits that it would have been preferable for Carolina Meadows to have been informed of and formally noticed of this situation when the rate case was filed, but, unfortunately, that could not be done because both the Company and the Public Staff only recognized the issue at the very end of the pre-evidentiary hearing process. If the stipulated rate design correction is not made in this case, Aqua's other customers in the Company's Aqua Sewer Rate Division will bear the full cost burden for a significant portion which rightfully belongs to Carolina Meadows.

Aqua's position as set forth above is also consistent with and supported by the following provision of the Commission-prescribed February 14, 2020 Notice to Customers which Aqua mailed to Carolina Meadows:

The 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. However, any rate structure considered will not generate more overall revenues than requested.

The above-quoted notice provision is specifically designed to address situations such as the Base Facilities Charge rate design issue under consideration in this case; i.e., an unanticipated, but significant, issue which arises late in a rate case for which no prior customer notice could reasonably have been anticipated or given.

In addition, the Public Staff and other intervenors frequently advocate for alternative rate design proposals in Commission rate cases which differ from the rate designs proposed by the utility. For instance, the Public Staff and AGO have

made alternative rate design proposals in this case by their advocacy for converting Aqua's flat rate sewer customers (who also receive water service from the Company) to metered sewer rates. There are other rate design differences being advocated by the Public Staff and AGO which also differ from the Company's proposed rate design which have not been noticed to affected customers. Thus, the position taken by Carolina Meadows, if adopted by the Commission in this case, would rule out any consideration of, much less approval of, alternative rate design proposals offered by the Public Staff or intervenors, such as the AGO.

Accordingly, for all of the reasons set forth above, Aqua requests that the Commission deny the Carolina Meadows Petition in its entirety and approve the Company's proposed rate design for Carolina Meadows. The Commission can, on the basis of the evidence already included in the record in this case plus the additional evidence contained in the verified Petition and affidavits filed by Carolina Meadows and the verified responses filed by Aqua and the Public Staff, decide the rate design for Carolina Meadows on the merits without further proceedings and without the necessity of allowing either the Petition to Intervene or, alternatively, initiating a formal complaint proceeding.

Furthermore, in ruling on the Carolina Meadows Petition, the Commission should also take note of the following statement set forth on page 8 thereof:

...Carolina Meadows is not requesting that the Commission alter any deadlines or delay proceedings in this case, and granting this Petition will not require the Commission to do so. Furthermore, Carolina Meadows does not seek to expand the scope of the proceedings. Instead, Carolina Meadows is asking only that the Commission accepts (sic) into the record the attached affidavits and declare void the Stipulation to increase Carolina Meadows' base facility charges.

If the Commission were to act as requested by Carolina Meadows and declare void the stipulated Base Facilities Charge, such action would activate Section VI of the Stipulation which provides, in pertinent part, that:

This Stipulation is the product of negotiation and compromise of a complex set of issues, and no portion of this Stipulation is or will be binding on any of the Parties unless the entire Partial 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 any reviewing court, the Stipulating Parties agree to meet and discuss the applicable Commission or court order within five business days of its issuance in an attempt in good faith to determine if they are willing to modify the Stipulation consistent with the order....

Contrary to the statement made by Carolina Meadows as previously quoted above, such action would clearly delay a final order in these proceedings and would also, in reality, expand the scope of these proceedings through addition of another adverse formal party.

In closing, Aqua notes that, since its purchase in January 2006, the Carolina Meadows WWTP service area has been included in the Company's Uniform Sewer Rate Division. The significance of this fact is that Aqua's customers served by that WWTP, including Carolina Meadows, have been, and will continue to be, charged uniform rates. Because of the longstanding failure of both Aqua and the Public Staff to recognize and correct the error in the Company's tariff regarding the incorrectly designed and calculated Base Facilities Charge applicable to Carolina Meadows, that customer has unjustifiably benefitted by being charged too little for the sewer utility services it receives to the financial detriment of Aqua.

The stipulated settlement proposed by Aqua and the Public Staff as to an appropriate basis upon which to calculate the Carolina Meadows Base Facilities Charge in this case serves to significantly address that inequity while also mitigating rate shock to Carolina Meadows. Consideration of further adjustments to the Base Facilities Charge paid by Carolina Meadows will be deferred to future rate cases where the affected customer will have notice and opportunity to intervene and be heard. If the stipulated Base Facilities Charge design based on 186 REUs is not approved by the Commission in this case, the overall rate design for all commercial customers in the Aqua Uniform Sewer Rate Division will have to be redesigned in order to properly bill those customers and to allow the Company a reasonable opportunity to recover its Commission-approved revenue requirement.

Conclusion

For all of the foregoing reasons, Aqua requests that the Commission deny the Carolina Meadows Petition in its entirety. Carolina Meadows has not demonstrated good cause as required by Commission Rule R1-19(b) in support of its out-of-time Petition to Intervene in this proceeding, particularly since such Petition would both broaden and re-open the issues in this case and seeks affirmative relief. Nor has Carolina Meadows demonstrated that reasonable ground exists in support of its alternative request to initiate a complaint proceeding pursuant to G.S. 62-73, as the pleadings fail to show that Aqua has either done or failed to do any act or thing that is in violation of any law or order or rule of the

Commission, or that any rate, service, classification, rule, regulation or practice is unjust and unreasonable.

Respectfully submitted this the 3rd day of September 2020.

ATTORNEYS FOR AQUA NORTH CAROLINA, INC.

Electronically Submitted

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Historical Background Information Regarding Aqua's Acquisition of the Carolina Meadows Wastewater Treatment Plant

1. On June 28, 2005, Aqua North Carolina, Inc. ("Aqua"), and Chatham Water Reclamation Company, LLC ("Chatham Water"), filed an application with the Commission seeking authority to transfer the wastewater system assets and franchises for Governors Village Subdivision, Governors Forest Subdivision, Governors Village Townhomes, and Governors Village Offices in Chatham County, North Carolina, from Chatham Water to Aqua, and for approval of rates. The transfer application was filed in Docket Nos. W-218, Sub 216 and W-118, Sub 3.

2. On December 9, 2005, the Commission entered an Order approving the transfer (Order Approving Transfer) of the subject wastewater system assets and utility franchises from Chatham Water to Aqua. In its Order Approving Transfer, the Commission made the following relevant findings of fact:

[Finding of Fact No. 3]: Whippoorwill, LLC (Whippoorwill), owns the wastewater treatment plant for the Chatham Water service areas, which also serves Carolina Meadows, Inc., a continuing care retirement community located near the Chatham Water service areas. Chatham Water owns a one-third-membership interest in Whippoorwill, and Carolina Meadows owns the remaining two-thirds interest.

[Finding of Fact No. 4]: Aqua has entered into an Asset Purchase Agreement with Chatham Water, dated May 12, 2005 (Chatham Water APA), and an Assets Purchase Agreement with Carolina Meadows, dated June 2, 2005 (Carolina Meadows APA), to purchase their respective interests in Whippoorwill together with other assets used in the operation of the treatment facility. By virtue of these agreements, Aqua will own 100% of the treatment facility and other assets used in its operation to serve both the existing Chatham Water franchise areas, and, on a bulk basis, Carolina Meadows.

[Finding of Fact No. 5]: Pursuant to the Carolina Meadows APA, Aqua will furnish Carolina Meadows bulk treatment service at a rate of \$2.50 per 1,000 gallons for a period of five years after Closing, as that term is defined in the Carolina Meadows APA. The rate will increase to a maximum of \$5.50 per 1,000 gallons for the three year period following Aqua's next general rate case after the five-year term.¹

[Finding of Fact No. 6]: In a letter to the Public Staff dated November 21, 2005, Aqua agreed to reduce the contract purchase price to be paid to Chatham Water from \$373,939 to \$258,578, the combined net plant in service at June 30, 2005, for both Chatham Water and Carolina Meadows as calculated by the Public Staff. The Public Staff recommended rate base treatment for the reduced purchase price, the \$2,000 reimbursement for attorney's fees for Chatham Water, the \$2,000 reimbursement for attorney's fees for Carolina Meadows, and the \$95,000 purchase price for the Carolina Meadows' land. In all other respects, the agreements with Chatham Water and Carolina Meadows remain unchanged. In an e-mail message to the Public Staff dated November 21, 2005, Chatham Water confirmed its agreement with Aqua regarding the reduced lump sum portion of the purchase price.²

[Finding of Fact No. 7]: In consideration of the rate base treatment discussed above, Aqua also agreed that in the event of a system specific rate case during the time period of the "bulk treatment rate" as described in Section 1.3(d) of the Carolina Meadows APA, the difference between the revenues generated by the bulk treatment rate and the revenue requirement for Carolina Meadows, calculated based on rate base, expenses, and allowed return, will be imputed in order to prevent a negative impact on the non-Carolina Meadows customers. The amount of rate base used in determining the calculated revenue requirement for Carolina Meadows shall include, but not be limited to, the net plant in service of the assets acquired from Carolina Meadows, which is \$392,250 as of June 30, 2005, the

¹ See Section 1.3(d) of the Carolina Meadows Asset Purchase Agreement. Section 1.3(d) also specified that "Buyer [Aqua] will install an influent flow meter measuring incoming flow from the Carolina Meadows Community and will provide the meter reading to Seller [Carolina Meadows] with each billing."

² Consistent with Finding of Fact No. 6, Ordering Paragraph No. 5 of the Order Approving Transfer provided as follows:

The combined net plant in service at June 30, 2005, for both Chatham Water and Carolina Meadows is \$258,578. Rate base treatment for the reduced purchase price of \$258,578, the \$2,000 reimbursement for attorney's fees for Chatham Water, the \$2,000 reimbursement for attorney's fees for Carolina Meadows, and the \$95,000 purchase price for the Carolina Meadows' land is appropriate.

reimbursement of attorneys (sic) fees for Carolina Meadows, and an allocation of the \$95,000 purchase price for the land.³

[Finding of Fact No. 8]: Aqua further agreed that in the event of a consolidated system rate case during the time period of the "bulk treatment rate" as described in Section 1.3(d) of the Carolina Meadows APA, the Public Staff retains the right to recommend any adjustment necessary to offset the impact of the bulk treatment rate on non-Carolina Meadows customers, if the impact is material.⁴

3. Appendix B to the Commission's December 9, 2005 Order Approving Transfer set forth a Schedule of Rates which, in pertinent part, specified a bulk sewer treatment usage rate or charge for Carolina Meadows of \$2.50 per 1,000 gallons. This approved usage rate was consistent with the rate specified in Section 1.3(d) of the Carolina Meadows APA.

4. On December 8, 2005, Aqua filed a letter in the two referenced Commission transfer dockets stating that the Company had closed on the acquisition in question.

5. On July 18, 2008, Aqua, Fairways Utilities, Inc. (Fairways), Glynnwood Water Systems, Inc. (Glynnwood), Heater Utilities, Inc. (Heater), Mountain Point Utilities, Inc. (Mountain Point), Rayco Utilities, Inc. (Rayco), and Willowbrook Utility Company, Inc. (Willowbrook) (collectively, Joint Applicants), filed a joint application for approval to merge Fairways, Glynnwood, Heater, Mountain Point, Rayco, and Willowbrook into Aqua pursuant to G.S. 62-111. Contemporaneously, Aqua filed a request to increase rates for the water and sewer

³ This provision is also embodied in the Commission's December 9, 2005 Order as Ordering Paragraph No. 6.

⁴ This provision is also embodied in the Commission's December 9, 2005 Order as Ordering Paragraph No. 7.

utility systems, as well as the rates for Mobile Hills Estates. The Aqua rate increase request, including whether the systems should be consolidated into uniform rates, was filed to be addressed separately in Docket Nos. W-218, Sub 274, and W-224, Sub 15.⁵

6. By Order entered in Docket Nos. W-218, Sub 273 *et. al.* on December 5, 2008, the Commission approved Aqua's merger application. By letter filed in the merger dockets on April 23, 2009, Aqua notified the Commission that the merger was completed on April 13, 2009.

7. By Order entered in Docket Nos. W-218, Sub 274 and W-224, Sub 15 on April 8, 2009, the Commission granted Aqua a partial rate increase. The Schedule of Rates attached as Appendix A to the Sub 274 Rate Case Order specified, in pertinent part, that the bulk sewer usage rates applicable to Carolina Meadows continued to be \$2.50 per 1,000 gallons specified in Docket No. W-218, Sub 216. The Sub 274 Rate Case Order contains the following discussion in the Evidence and Conclusions section at page 30 regarding a ratemaking adjustment made by the Public Staff applicable to Carolina Meadows:

Further, [Public Staff] witness [Babette] McKemie testified that Carolina Meadows has rates that were established between Aqua NC and the previous owner, which are lower than the uniform sewer rates. Witness McKemie stated that the remaining Aqua NC customers should not pay higher rates for sewer service as a result of Aqua NC's contractual agreement. Witness McKemie, therefore, recommended treating Carolina Meadows as a standard metered customer for Aqua NC in calculating rates. Witness McKemie explained that Aqua NC may continue to charge the contractual rates to customers in Carolina Meadows, but any difference between the

⁵ Aqua's Brookwood and LaGrange service areas were not included as part of the Company's Sub 274 rate case application. Utility service rates for the Brookwood and LaGrange service areas were established by Order issued on January 29, 2008, in Docket No. W-218, Sub 251.

rates, which was imputed; however, Aqua NC will continue to charge Carolina Meadows customer(s) at the reduced contractual bulk rate.

8. The prefiled Sub 274 rate case testimony of Public Staff engineering witness David C. Furr contained an excess capacity adjustment applicable to the Carolina Meadows wastewater treatment plant (WWTP) described by witness Furr as follows:

I am recommending an excess capacity adjustment for the Carolina Meadows wastewater plant. The treatment plant has recently been expanded from 180,000 gallons per day (gpd) to 350,000 gpd and placed into service.

I determined the percent of plant required to serve test year 2007 active customers by a review of daily monitoring reports for 2007. The reports show a peak monthly average flow from the plant to be 157,000 gpd. After discounting two daily maximum flows that were clearly aberrations, the maximum daily flow from the plant was 207,000 gallons. I've chosen this as the actual amount of the plant in service for the test year. I've calculated excess capacity as follows:

$$(350,000 - 207,000) / 350,000 = 40.9\%.$$

9. The prefiled Sub 274 rate case testimony of Public Staff accounting witness Katherine A. Fernald (at page 57) states that, based on the recommendation of Public Staff witness Furr, she made a ratemaking adjustment which removed 40.9% of the plant investment, accumulated depreciation, and depreciation expense for the Carolina Meadows wastewater treatment plant from Aqua's rate base. This ratemaking adjustment removed \$1,655,410 of Aqua's

plant investment (net of accumulated depreciation) from the Company's rate base and denied recovery of \$96,389 of depreciation expense in rates.⁶

10. In its Sub 274 Rate Case Order, the Commission approved a Joint Stipulation filed by Aqua, the Public Staff, and a user group intervenor which, in pertinent part, settled the levels of rate base, revenues, and expenses as set forth therein and included in Fernald Exhibit I, including the specific Carolina Meadows ratemaking adjustments addressed in Paragraphs 7, 8, and 9 above.

11. Aqua filed its next general rate case in Docket No. W-218, Sub 319 on January 21, 2011. By its Sub 319 Rate Case Application (Exhibit O, page 6 of 9), Aqua proposed the following specific sewer rates for the Carolina Meadows service area: No Base Facilities Charge (sometimes also referred to as "BFC") and a usage rate of \$5.50 per 1,000 gallons (along with a note to see Docket No. W-218, Sub 216).

12. On March 1, 2011, the Commission entered its Scheduling Order in the Sub 319 rate case docket. By that Order, Aqua was required to mail a 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 to the Scheduling Order as Appendix A, set forth (at page 3 of 5) the following commercial sewer rates

⁶ See Fernald Exhibit 1, Schedule 2-9.

requested by Aqua for the Company's Carolina Meadows service area: No Base Facilities Charge and a usage rate of \$5.50 per 1,000 gallons.

13. On September 13, 2011, the Commission entered a Notice of Decision and Order in the Sub 319 docket whereby Aqua was granted a partial rate increase. The complete or final Order setting forth the evidence and conclusions in support of Notice of Decision and Order was subsequently issued on November 3, 2011.

14. Effective for service rendered on and after September 13, 2011, the date of the Sub 319 Rate Case Order, Aqua began to charge Carolina Meadows a monthly usage rate of \$5.50 per 1,000 gallons. No Monthly Base Facilities Charge was applied to the customer, consistent with the Company's proposed rates.

15. Review of the complete or final Sub 319 Rate Case Order of November 3, 2011, indicates that the Public Staff again proposed an excess capacity adjustment for Aqua's Carolina Meadows WWTP designed to remove 43.65% or \$1,633,554 of Aqua's plant investment (net of accumulated depreciation) from the Company's rate base and \$74,762 of the Company's total depreciation and amortization expense of \$171,275. Based on the evidence in the case, the Commission made a lesser excess capacity adjustment than the one recommended by the Public Staff based on a reduced excess capacity percentage of 31.89%. This ratemaking adjustment removed \$1,193,449 of Aqua's Carolina Meadows plant investment (net of accumulated depreciation) from the Company's

rate base and denied recovery of \$54,620 of the Company's total depreciation and amortization expense for that plant in rates.

16. Aqua filed its next general rate case in Docket No. W-218, Sub 363 on August 2, 2013. By its Sub 363 Rate Case Application and proposed Schedule of Rates (Exhibit O, page 6 of 10), Aqua proposed the following sewer rates for the Carolina Meadows service area: No Base Facilities Charge and a usage rate of \$5.50 per 1,000 gallons.

17. On September 24, 2013, the Commission entered its Scheduling Order in the Sub 363 rate case docket. By that Order, Aqua was required to mail a 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 to the Scheduling Order as Appendix A, set forth (at page 3 of 6) the following commercial sewer rates requested by Aqua for the Company's Carolina Meadows service area: No Base Facilities Charge and a usage rate of \$5.50 per 1,000 gallons.

18. On January 17, 2014, Aqua and the Public Staff filed a Stipulation in the Sub 363 docket, whereby they notified the Commission that all contested issues had been settled. On March 5, 2014, Aqua and the Public Staff filed a Joint Proposed Order, including a Proposed Schedule of Rates and Notices to Customers. The Proposed Schedule of Rates (Appendix A-1, page 4 of 8) attached to the Joint Proposed Order contained approved commercial sewer rates for a customer with a 6-inch meter of a Base Facilities Charge of \$1,160.50 (6-inch meter) and a usage charge of \$8.05 per 1,000 gallons. In addition, the Proposed

Notice to Customers (Appendix B-1, page 4 of 6) specifically referenced the following new sewer rates for Carolina Meadows: Monthly Base Facilities Charge of \$1,160.50 (6-inch meter) and a usage charge of \$8.05 per 1,000 gallons.

19. On May 2, 2014, the Commission entered an Order in the Sub 363 docket whereby Aqua was granted a partial rate increase. Review of the Schedule of Rates (Appendix A-1) attached to that Order, as recommended by Aqua and the Public Staff in the Appendices to their Joint Proposed Order, contains approved commercial sewer rates for a customer with a 6-inch meter of a Base Facilities Charge of \$1,160.50 (6-inch meter) and a usage charge of \$8.05 per 1,000 gallons. In addition, the Notice to Customers (Appendix B-1, page 4 of 6) specifically references the following new sewer rates for Carolina Meadows: Monthly Base Facilities Charge of \$1,160.50 (6-inch meter) and a usage charge of \$8.05 per 1,000 gallons.

20. The Sub 363 Rate Case Order Notice to Customers was mailed to all of Aqua's customers, including Carolina Meadows. In view of the fact that the Commission-approved Sub 363 Notice to Customers (Appendix B-1, page 4 of 6) specifically referenced the new sewer rates applicable to Carolina Meadows, that customer clearly had notice of and cannot credibly deny that, effective for service rendered on and after May 2, 2014, it should have been charged the following monthly sewer rates by Aqua: Monthly Base Facilities Charge of \$1,160.50 (6-inch meter) and a usage charge of \$8.05 per 1,000 gallons.

21. Aqua initiated the billing of the updated volumetric rate of \$8.05 per 1,000 gallons as of the May 2, 2014 effective date of the Order; however, through

an inadvertent error, Aqua did not begin to bill the Commission-approved sewer Base Facilities Charge rate of \$1,160.50 to Carolina Meadows that was authorized in the Sub 363 rate case.

22. As part of its Sub 363 rate case application, Aqua acceded to the application of an excess capacity adjustment which the Commission had previously approved related to the Company's Carolina Meadows WWTP, as well as two other WWTPs. Thus, Aqua incorporated an excess capacity adjustment into its filed case applicable to the Carolina Meadows WWTP. That adjustment, of course, had negative financial implications for the Company. Based on the evidence in the case, the Commission made an adjustment using an excess capacity percentage of 23.83%. This ratemaking adjustment removed \$772,919 of Aqua's Carolina Meadows plant investment (net of accumulated depreciation) from the Company's rate base and denied recovery of \$40,928 of the Company's total depreciation and amortization expense for that plant in rates.

23. Aqua filed its next general rate case on March 7, 2018, in Docket No. W-218, Sub 497. By its Sub 497 Rate Case Application and proposed Schedule of Rates (Exhibit O, pages 6 and 7 of 10), Aqua proposed the following commercial sewer rates for all of the Company's service areas unless noted differently: Base Facilities Charge for a 6-inch meter of \$1,400.00 and a usage rate of \$8.46 per 1,000 gallons. There was no mention of Carolina Meadows in the proposed Schedule or Rates which treated Carolina Meadows differently.

24. On April 5, 2018, the Commission entered its Scheduling Order in the Sub 497 rate case docket. By that Order, Aqua was required to mail a 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 to the Scheduling Order as Appendix A, set forth (at page 4 of 7) the commercial sewer rates requested by Aqua, including both the proposed new Base Facilities Charge for a 6-inch meter of \$1,400.00 and a usage rate of \$8.46 per 1,000 gallons.

25. On December 18, 2018, the Commission entered an Order in the Sub 497 docket whereby Aqua was granted a partial rate increase. Review of the Schedule of Rates (Appendix A-1) attached to that Order contains approved commercial sewer rates (at page 4 of 8) for a customer with a 6-inch meter of a Base Facilities Charge of \$1,305.50 and a usage charge of \$8.92 per 1,000 gallons. There are no exceptions to this rate set forth on the new Schedule of Rates. In addition, the Notice to Customers (Appendix B-1, page 5 of 7) contained the same new commercial sewer rates for all of Aqua's sewer service areas unless exceptions were noted separately. The Carolina Meadows service area was not listed as an exception in the commercial sewer rates listed in the Commission-approved Sub 497 Notice to Customers. Again, through an inadvertent error, Aqua did not, at that time, begin to bill the Commission-approved commercial sewer Base Facilities Charge rate to Carolina Meadows that was authorized in the Sub 497 rate case.⁷ Instead, Aqua billed Carolina Meadows only the NCUC approved usage rate of \$8.92 per 1,000 gallons.

⁷ Aqua began to bill the Commission-authorized Base Facilities Charge to Carolina Meadows in March 2020.

26. Regarding the excess capacity issue in the Sub 497 rate case, Aqua initially filed its rate case with an excess capacity adjustment for the Carolina Meadows WWTP and two other WWTPs – as it had previously done in the Sub 363 rate case. In the Sub 497 case, the Public Staff applied an excess capacity adjustment of 30.63% applicable to the Carolina Meadows WWTP. However, in supplemental testimony, the Public Staff also applied that same excess capacity percentage adjustment to the Company's post-test year, major modification and rehabilitation upgrade project at the Carolina Meadows WWTP. The cost of that upgrade project was approximately \$1.7 million. Aqua challenged the Public Staff's proposed excess capacity adjustment in supplemental rebuttal testimony.

27. In its Sub 497 Rate Case Order, the Commission continued to apply an excess capacity adjustment to certain portions of the Company's investment in the Carolina Meadows WWTP. The excess capacity adjustment factor applied by the Commission to the Carolina Meadows WWTP was 30.63%. That ratemaking adjustment reduced Aqua's rate base at Carolina Meadows by \$1,031,151 (net of accumulated depreciation) and denied cost recovery to the Company of \$62,065 of the total depreciation and amortization expense for that plant.

28. Aqua's Sub 363 sewer rates became effective for service rendered on and after May 2, 2014, and remained in effect until they were superseded by the new Sub 497 rates which became effective for service rendered on and after December 18, 2018. Thus, the Company's Sub 363 rates were in effect for a period of approximately 56 months. During that approximate 56-month period of time, Aqua failed to bill Carolina Meadows the Company's Commission-approved

Monthly Base Facilities Charge of \$1,160.50. The total underbilling to Carolina Meadows was approximately \$65,000.

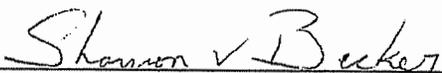
29. Aqua did not in fact begin to bill a Base Facilities Charge to Carolina Meadows until March 2020, when the Company notified the customer that it had previously failed to bill the Commission-approved Monthly Base Facilities Charge.⁸ Beginning in March 2020, Aqua began to bill Carolina Meadows the Company's Sub 497 authorized Monthly Base Facilities Charge of \$1,305.50 plus the applicable usage charge of \$8.92 per 1,000 gallons; Aqua did not back-bill the Carolina Meadows Senior Center for the \$1,305.50 Base Facilities Charge at that time. Thus, Aqua's Sub 497 rates were in effect for a period of 14 months (January 2019 – February 2020) before the Company corrected its billing mistake and began to properly bill Carolina Meadows the most recent Commission approved Base Facilities Charge of \$1,305.50 per month for sewer utility service. The total underbilling to Carolina Meadows during that period of time was approximately \$18,300.

30. Thus, during the approximate 70-month period of time from May 2014 through February 2020, Carolina Meadows was underbilled in the total amount of approximately \$83,300 as a result of the Company not billing this customer the Commission-approved Monthly Base Facilities Charges.

⁸ Aqua President Becker called Mr. Camara on or about February 7, 2020, and left a voicemail message informing him of the Company's billing error and its failure to bill Carolina Meadows the Commission-authorized Base Facilities Charge. The message to Mr. Camara advised that Aqua would begin billing the Base Facilities Charge of \$1,305.50 to Carolina Meadows in March 2020, but that the Company did not intend to back-bill the customer.

VERIFICATION

Shannon V. Becker, being duly sworn, deposes and says: that he is the President of Aqua North Carolina, Inc.; that he is familiar with the facts set out in this **VERIFIED RESPONSE IN OPPOSITION TO PETITION OF CAROLINA MEADOWS, INC. (INCLUDING APPENDIX A)**, filed in Docket No. W-218, Sub 526; that he has read the foregoing Verified Response and knows the contents thereof; and that the same is true of his knowledge except as to those matters stated therein on information and belief, and as to those he believes them to be true.

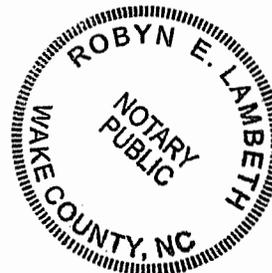


Shannon V. Becker

Sworn to and subscribed before me this
the 3rd day of September, 2020.



Robyn E. Lambeth
Notary Public



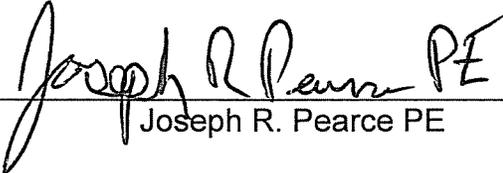
My Commission Expires: May 13, 2021

I signed this notarial certificate on September 3rd, 2020, according to the emergency video notarization requirements contained in G.S. 10B-25.

Notary Public location during video notarization: Wake County
Stated physical location of principal during video notarization: Wake County

VERIFICATION

Joseph R. Pearce PE, being duly sworn, deposes and says: that he is the Director of Operations for Aqua North Carolina, Inc.; that he is familiar with the facts set out in this **VERIFIED RESPONSE IN OPPOSITION TO PETITION OF CAROLINA MEADOWS, INC. (INCLUDING APPENDIX A)**, filed in Docket No. W-218, Sub 526; that he has read the foregoing Verified Response and knows the contents thereof; and that the same is true of his knowledge except as to those matters stated therein on information and belief, and as to those he believes them to be true.

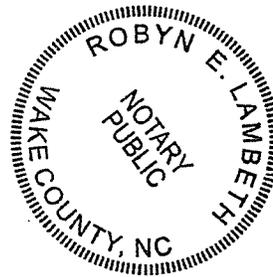


Joseph R. Pearce PE

Sworn to and subscribed before me this
the 3rd day of September, 2020.



Robyn E. Lambeth
Notary Public



My Commission Expires: May 13, 2021

CERTIFICATE OF SERVICE

I hereby certify that on this the 3rd day of September 2020, a copy of the foregoing **VERIFIED RESPONSE IN OPPOSITION TO PETITION OF CAROLINA MEADOWS, INC. (INCLUDING APPENDIX A)**, filed in Docket No. W-218, Sub 526, has been duly served upon all parties of record by electronic service, addressed as shown below:

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