

**SANFORD LAW OFFICE, PLLC**

Jo Anne Sanford, Attorney at Law

March 15, 2022

**Via Electronic Filing**

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

Re: Aqua North Carolina, Inc.  
Docket No. M-100, Sub 164  
Verified Response Regarding Consideration of the Federal Funding  
Available Under the Infrastructure Investment and Jobs Act

Dear Ms. Dunston:

On February 1, 2022, the Commission entered an Order in this docket whereby Aqua North Carolina, Inc. ("Aqua" or "Company") was allowed to file written comments on or before March 15, 2022, pertaining to available federal programs, if any, applicable to the water and sewer utility industry in North Carolina. The Commission noted that, (a) on November 15, 2021, the President of the United States signed into law the Infrastructure Investment and Jobs Act, H.R. 3684, 117th Cong. (2021) ("IIJA") and (b) that the IIJA contains a number of provisions that relate to utility infrastructure improvement including, in pertinent part, access to clean water.

Aqua hereby files the Company's Verified Response to the questions and issues posed by the Commission. This Response has been verified by Shannon V. Becker, Aqua's President.

As always, thank you and your staff for your assistance; please feel free to contact me if there are any questions or suggestions.

Sincerely,

**Electronically Submitted**  
/s/ Jo Anne Sanford  
Sanford Law Office, PLLC  
State Bar No. 6831

Attorney for Aqua North Carolina, Inc.

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. M-100, SUB 164

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	
Consideration of the Federal Funding	)	AQUA NORTH CAROLINA,
Available Under the Infrastructure	)	INC. COMMENTS
Investment and Jobs Act	)	REGARDING FEDERAL
	)	FUNDING FOR UTILITY
	)	SERVICE IN NORTH
	)	CAROLINA

**NOW COMES Aqua North Carolina, Inc. (“Aqua”)** to file Comments pursuant to the Order Allowing Comments Regarding Federal Funding For Utility Service in North Carolina (“Order”) entered by the North Carolina Utilities Commission (“Commission” or “NCUC”) in this docket on February 1, 2022.

The Bipartisan Infrastructure Law (BIL), also called the Infrastructure Investment and Jobs Act of 2021 (IIJA), was signed into law on November 15, 2021. The law provides \$110 billion to help rebuild roads, bridges, and other major projects, including \$50 billion in funding to the U.S. Environmental Protection Agency (EPA) to improve the nation’s drinking water and wastewater systems.

The Commission’s February 1<sup>st</sup> Order, among other things, draws a preliminary conclusion that it is in the public interest for the public utilities of this State to “consider taking advantage of these available federal grants and loans, in order to promote adequate, reliable, and economical utility service to the citizens and residents of the State”. The Order allows interested parties to file written comments regarding this conclusion. As such, and as related to Aqua, the Commission ordered:

3. That parties may file written comments as provided herein on or before March 15, 2022, provided that each utility party is only required to comment on available federal programs as they pertain to its particular industry.

#### **AQUA'S COMMENTS:**

The majority of BIL water and wastewater infrastructure dollars are expected to be distributed by the U.S. Environmental Protection Agency (EPA) through the Clean Water and Drinking Water State Revolving Fund (SRF) programs facilitated by the states with an emphasis on distributing funds in support of projects benefitting disadvantaged communities.” The details related to the availability, awarding, and distribution of applicable BIL funds from the EPA and the states to eligible participants continue to be developed. The EPA only recently issued its first Memorandum, on March 8, 2022, regarding the “Implementation of the Clean Water and Drinking Water State Revolving Fund Provisions of the Bipartisan Infrastructure Law”. The Memorandum outlines the key priorities for SRF BIL Implementation, BIL Funding Implementation, CWSRF Base Program Implementation, and DWSRF Base Program Implementation. State level guidance to clearly define the local award application processes and eligibility factors necessary to award funding for the specific BIL program priorities under the Clean Water State Revolving Fund and Drinking Water State Revolving Funds have yet to be issued. A more thorough analysis of the guidance included within the EPA’s March 8, 2022 Memorandum, along with the state level guidance, is required before Aqua is able to sufficiently assess its eligibility for BIL funds and necessary costs associated with managing the related requirements.

Currently available guidance provides that federal BIL funds are to be distributed to each state and, in North Carolina, will be managed within the NC Department of

Environmental Quality (NCDEQ) using its established CWSRF and DWSRF program processes. The BIL established five additional funding programs as follows:

- CWSRF General Supplemental Funding
- CWSRF Emerging Contaminants Funding
- DWSRF General Supplemental Funding
- DWSRF Emerging Contaminants Funding
- DWSRF Lead Service Line Replacement Funding

It is Aqua's understanding that North Carolina has historically not allowed Investor-owned Utilities (IOU's) to participate in CWSRF. Assuming that this will not change in the foreseeable future, the IOU's may still be able to participate in the DWSRF programs under the BIL, which include a focus on lead service line inventorying and replacement, emerging contaminants, emerging technologies, and utility resilience.

The DWSRF program is managed by the State Water Infrastructure Authority (SWIA) under NCDEQ. Currently, the DWSRF has two funding cycles per year and loans are approved for projects using a Priority Points Rating Sheet that awards points to prioritize the distribution of applicable funds to those projects that help protect public health for financially disadvantaged communities through safe drinking water in the form of low-interest loans and a limited amount of principal forgiveness or grants. According to its March 8<sup>th</sup> Memorandum, the EPA expects to "Simplify and streamline the application process" by evaluating and revising the DWSRF disadvantaged community definition and CWSRF affordability criteria as well as the existing SRF priority point system to rank projects commensurate with need. The applicability for investor-owned utility projects to

be eligible for each of the BIL funding programs identified above will be subject to the revisions made to these programs.

There are several possible projects for which Aqua may be able to utilize BIL funds within the categories above once specific guidance on the application process is issued. Preliminarily, Aqua would be interested in pursuing program funding related to emerging contaminants and system resiliency, if eligible. Aqua might also consider application for be eligible lead service line (LSL) replacement projects if its systems are determined to contain LSLs under the revised lead and copper rule; however, the BIL requires facilitating complete service line replacements, which may cause property rights concerns that could make utilization of this specific fund impractical by Aqua.

The existing SRF application process places considerable weight on the prioritization of projects supporting disadvantaged communities and meeting certain affordability criteria. Emphasis on supporting projects within disadvantaged communities and affordability is a continued priority of the allocation of BIL awards. While assessing population socio-economic factors and affordability criteria to determine worthiness of specific project eligibility for singular systems within a common geography, such as those operated by most Local Governmental Units, may be practical, properly assessing these metrics is a hurdle that exists for investor-owned utilities made up of tens, if not hundreds, of diverse self-contained water systems across a wide geographic footprint that maintains consolidated rates. Note that Aqua North Carolina owns and operates more than 750 water and/or wastewater systems in 50 counties across North Carolina.

Aqua understands the preference to allocate funds to assist disadvantaged communities but is also very concerned with rate affordability for its tax-paying customers

who must pay the actual costs of capital in comparison to those utilities run by Local Governmental Units with heightened access to low cost or grant funding. It should be recognized that Local Governmental Unit utilities operate as business enterprises, and to afford them sole access to this funding is to provide them an unfair advantage as a business enterprise. The opportunity for funding provided to Aqua should be commensurate with the assistance provided to Local Governmental Units, particularly as it relates to affordability.

### **CONCLUSION**

Aqua hereby requests that the Commission accept these Comments regarding federal funding for utility service in North Carolina.

Respectfully submitted, this the 15th day of March, 2022.

### **SANFORD LAW OFFICE, PLLC**

#### **Electronically Submitted**

**/s/Jo Anne Sanford**

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**/s/Robert H. Bennink, Jr.**

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**ATTORNEYS FOR AQUA NORTH CAROLINA, INC.  
AND CAROLINA WATER SERVICE, INC. OF  
NORTH CAROLINA**

**VERIFICATION**

**Shannon V. Becker**, being duly sworn, deposes and says:

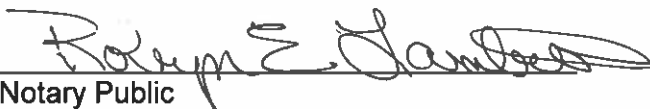
That he is the President for Aqua North Carolina, Inc.; that he is familiar with the facts set out in the foregoing **COMMENTS REGARDING FEDERAL FUNDING FOR UTILITY SERVICE IN NORTH CAROLINA BY AQUA NORTH CAROLINA, INC.**, filed in Docket No. M-100, Sub 164; that he has read the foregoing Comments and knows the contents thereof; and that the same are 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

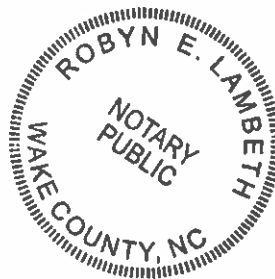
Sworn to and subscribed before me this

the 15<sup>th</sup> day of March 2022.

  
Notary Public

My Commission Expires:

May 13 2026





### **CERTIFICATE OF SERVICE**

I hereby certify that on this the 15<sup>th</sup> day of March, 2022, a copy of the foregoing  
**COMMENTS REGARDING FEDERAL FUNDING FOR UTILITY SERVICE IN NORTH  
CAROLINA BY AQUA NORTH CAROLINA, INC.**, filed in Docket No. M-100, Sub 164,  
has been duly served upon all parties to this proceeding by electronic service.

**Electronically Submitted**

**/s/Jo Anne Sanford**

State Bar No. 6831

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Mar 15 2022