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February 3, 2023

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

Via Electronic Submittal

Re: In the Matter of
Application by Aqua North Carolina, Inc. for Authority to Adjust and
Increase Rates and Charges for Water and Sewer Utility Service in All
Service Areas in North Carolina
Docket No. W-218, Sub 573
Aqua's Reply to Public Staff Letter on Temporary Rates

Dear Ms. Dunston:

On behalf of Aqua North Carolina, Inc. ("Aqua"), I herewith provide for filing in the above referenced docket, Reply to Public Staff Letter on Temporary Rates.

I hereby certify that we have electronically served a copy of this filing on the Public Staff, Commission Legal and counsel and parties of record.

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
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Enclosures

Copy to: Parties and Counsel of Record
Elizabeth Culpepper, NC Public Staff
Jessica Heironimus, NC Public Staff
Lynn Jarvis, Commission - Legal
Megan Jost, NC Public Staff
Monica Webb-Shackleford, Commission – Legal

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Feb 03 2023

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 Rates for Water)
and Sewer Utility Service in All)
Service Areas in North Carolina)
	REPLY TO PUBLIC STAFF
	LETTER ON TEMPORARY
	RATES

NOW COMES Aqua North Carolina, Inc. ("Aqua" or "Company"), by and through its undersigned counsel, and replies to the letter filed by the Public Staff on February 2, 2023, in opposition to temporary rates ("Public Staff Letter"). The position set forth in the Public Staff letter is without legal support as discussed below.

1. On February 2, 2023, Aqua filed a Clarification of Notice of Intent to Place Temporary Rates in Effect ("Clarification") that explained why its temporary rates satisfied the requirement in N.C. Gen. Stat. § 62-135(b) that "No rate or rates placed in effect pursuant to this section shall result in an increase of more than twenty percent (20%) on any single rate classification of the public utility. Before filing that Clarification, counsel for Aqua had shared the Company's position with the Public Staff and sought their response.

2. The Public Staff Letter states that Aqua's temporary rates comply with the requirement of N.C. Gen. Stat. § 62-135(b) that the rates shall not result in an increase of more than twenty percent (20%) on any single rate classification.

3. The Public Staff Letter then adds that

the Public Staff does not believe the temporary rates proposed by the Company meet the requirement of N.C.G.S. § 62-130(a) that rates allowed by the Commission be just and reasonable or the requirement of N.C.G.S. § 62-140 that public utilities not establish any unreasonable difference as to rates or services as between localities or classes of service.

Aqua disagrees.

4. The wording of N.C.G.S. § 62-135 does not make temporary rates subject to any just and reasonable test. The Company has the legal right to implement temporary rates as long as it meets three, and only three, conditions: the 20% limit on increase for each rate class, Commission approval of an undertaking, and notice to the customers. There is no statutory review of "just and reasonable" for initial implementation of temporary rates.

5. The customers remain protected from unjust or unreasonable rates by virtue of the statutory provision for refund of revenues collected under temporary rates where those revenues exceed the amount approved in the final rate order. The final rate order sets rates on the basis of what is just and reasonable. The application of N.C.G.S. 62-130 occurs with approval of rates in the final order. The just and reasonable rates approved in the final order relate back to temporary rates through the refund mechanism. The Public Staff is legally incorrect in suggesting that a review of justness and reasonableness of rates should occur at the time of notice of temporary rates.

6. The Public Staff Letter is also incorrect in asserting that non-discrimination under N.C.G.S. 62-140 should be determined at the time of notice of temporary rates. No such review is provided for in N.C.G.S. § 62-135. The implementation of temporary rates is not subject to review as long as it meets the three conditions noted above; the statute provides for "notice" of temporary rates and not for Commission review and approval of temporary rates.

7. Furthermore, the Public Staff has not adequately supported its claim that the temporary rates result in a violation of N.C.G.S. § 62-140. This non-discrimination statute prohibits "unreasonable" differences in rates among customers, not all differences.

a. The Public Staff observes that there is a large percentage difference when comparing the increase in the usage charge of temporary rates for Aqua Sewer Rate Division metered customers with the temporary rate decrease for pass-through purchased sewer treatment customers. Of course the usage charge is only one component of the total rate, so that is not an appropriate comparison. More importantly, the fact that there is some difference does not in of itself make the difference unreasonable. The Public Staff does not say why the difference should be ruled unreasonable.

b. The Public Staff observes that Brookwood Water Rate Division temporary rates will be an 11.1% increase compared to a 4% decrease for Brookwood commercial flat rate customers. Once again, the fact that there is some difference does not in of itself make the difference unreasonable. The Public Staff does not say why the difference should be ruled

unreasonable. Moreover, there are no commercial flat rate customers in Brookwood at this time – the temporary rate is just to have a rate available should one seek service in the near future.

c. Finally, the Public Staff observes that Aqua witness Franceski had accepted Public Staff witness Darden's method for determining purchased water rates as correct. Aqua witness Franceski copied witness Darden's rates for purchased water into his file and does not see where a difference occurs. The Public Staff did not ask him about that perceived difference prior to filing the Public Staff Letter. He also notes that purchased water makes up such a small portion of ANC revenue that its effect would be pennies. This is another area where the Company is mystified as to where there is "unreasonable" discrimination within the meaning of N.C.G.S. § 62-140.

8. The Company's temporary rates seek to track its requested rate design for final rates. That the temporary rates do not track the Public Staff's rate design does not mean the temporary rates are unreasonable. There can be more than one reasonable approach to rate design, and N.C.G.S. § 62-135 does not require Aqua to use the Public Staff's rate design instead of the Company's for purposes of setting temporary rates.

With its temporary rates, Aqua took a conservative approach and sought to avoid implementing any interim increase that was likely to result in a refund, particularly under Aqua's proposed final rates. This was done in part to avoid customer confusion and use internal resources efficiently in the billing process. Of

course this depends on what final rates are approved, but the concept of striving to avoid refunds is reasonable. It is reasonable because the need for refunds signals that some customers (those eligible for refunds) were charged more in temporary rates than was determined proper in the final rate order. Aqua's rationale is to avoid customer confusion and use internal resources efficiently to minimize the chance that the temporary rates would be later deemed excessive for any particular group of customers. That approach is not unlawfully discriminatory. Aqua could have proposed interim rates at a 10% increase across the board, but chose the apportionment method as being more in line with minimizing the need for large refunds.

WHEREFORE, Aqua requests that the Commission deny or reject what the Public Staff Letter has labeled as its "contention" (not a motion) that the temporary rates are unlawful.

Respectfully submitted, this the 3rd day of February 2023.

Electronically Submitted

/s/David T. Drooz
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**ATTORNEYS FOR
AQUA NORTH CAROLINA, INC.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Reply to Public Staff Letter on Temporary Rates filed by Aqua North Carolina, Inc. in Docket No. W-218, Sub 573, has been served on each of the parties and counsel to this proceeding, NC Public Staff and Commission Staff.

This the 3rd day of February, 2023.

Electronically Submitted

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