

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. W-218, SUB 526A

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of  
Application by Aqua North Carolina, Inc.,            )   ORDER APPROVING  
202 MacKenan Court, Cary, North Carolina        )   CONSERVATION PILOT PROGRAM  
27511, for Approval of Annual Adjustment to       )   REVENUE RECONCILIATION BILL  
Conservation Pilot Program Revenue                )   CREDIT AND REQUIRING  
Reconciliation Charge/Credit                        )   CUSTOMER NOTICE

HEARD:       Monday, May 16, 2022, at 2:00 p.m., Commission Hearing Room 2115,  
                  Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE:      Commissioner ToNola D. Brown-Bland, Presiding; Chair Charlotte A.  
                  Mitchell, and Commissioners Daniel G. Clodfelter, Kimberly W. Duffley,  
                  Jeffrey A. Hughes, Floyd B. McKissick, Jr., and Karen M. Kemerait

APPEARANCES:

For Aqua North Carolina, Inc.:

David T. Drooz, Fox Rothschild LLP, 434 Fayetteville Street, Suite 2800,  
Raleigh, North Carolina 27601

For the Using and Consuming Public:

Megan Jost, Staff Attorney, Public Staff – North Carolina Utilities  
Commission, 4326 Mail Service Center, Raleigh, North Carolina 27699-4300

BY THE COMMISSION: On February 14, 2022, Aqua North Carolina, Inc. (Aqua or Company), filed a Conservation Pilot Program (Pilot Program) annual reconciliation request (Reconciliation Request) pursuant to the Commission's Order Approving Partial Settlement Agreement and Stipulation, Deciding Contested Issues, Granting Partial Rate Increase, and Requiring Customer Notice (Sub 526 Rate Case Order) issued on October 26, 2020, in Docket No. W-218, Sub 526 (Sub 526 Rate Case).

On April 1, 2022, the Public Staff filed its Notice of Public Staff's Plan to Present Comments and Recommendations at the Commission's April 18, 2022, Regular Staff Conference (Notice). The Public Staff recommends a different revenue reconciliation calculation than proposed by Aqua.

On April 8, 2022, Aqua filed its response to the Public Staff's Notice, consisting of a second affidavit of Dean M. Gearhart, Manager, Rates and Planning for Aqua. Aqua asserts that the calculations proposed in the Public Staff's Notice are inconsistent with the Commission's finding in the Sub 526 Rate Case Order that a revenue reconciliation process "as set forth by the Company" is integral to the Pilot Program.

The Public Staff planned to present this matter to the Commission at its April 18, 2022 Staff Conference; however, at the request of the Commission, this matter was removed from the Staff Conference agenda to allow Aqua and the Public Staff to provide verified written responses to Commission's questions prior to the parties' presentation of this matter to the Commission.

On May 4, 2022, the Commission issued its Order Scheduling Oral Argument and Requiring Verified Responses by the Parties directing the parties to file verified responses to nine questions by May 11, 2022, and scheduling oral argument on May 16, 2022.

On May 11, 2022, Aqua and the Public Staff filed their verified written responses to the Commission's questions. In addition, the Public Staff filed a motion requesting that the Public Staff and Aqua be permitted to have one or more technical witnesses present at the oral argument to respond to any technical questions from the Commission. The Commission issued an order granting the Public Staff's motion on May 12, 2022.

On May 12, 2022, Aqua filed corrected clean affidavits in Appendix A of its responses to Commission questions. Aqua notes that its original responses filed on May 11, 2022, were correct; however, Aqua's May 11 filing inadvertently included the affidavits with markups.

On May 16, 2022, the Commission heard oral arguments from the parties. Shannon Becker, President of Aqua, and Charles Junis, Director of the Public Staff's Water, Sewer, and Telephone Division, responded to questions from the Commission.

On June 14, 2022, Aqua and the Public Staff filed their respective proposed orders.

Based on the Reconciliation Request, the records of the Commission, the Notice of the Public Staff, Aqua's response to the Public Staff's Notice, the verified responses of both parties to the Commission's written questions, the parties' positions presented at the May 16, 2022 oral argument, the Sub 526 Rate Case Order, and the applicable statutes and Commission Rules, the Commission makes the following

## **FINDINGS OF FACT**

1. Aqua is a corporation duly organized and authorized to do business under the laws of the State of North Carolina. Aqua is a franchised public utility providing water and sewer utility service to customers in North Carolina, and is subject to the Commission's jurisdiction.

2. In the Sub 526 Rate Case, Aqua proposed to implement a Conservation Pilot Program for residential customers in five of the Company's service areas in North Carolina, including a revenue reconciliation process. The Public Staff opposed the Conservation Pilot Program. The Commission approved the Conservation Pilot Program for four of the five service areas included in Aqua's proposal.

3. The Sub 526 Rate Case Order includes the following Findings of Fact regarding the Conservation Pilot Program and the related revenue reconciliation process:

33. For the pilot program, Aqua NC proposed four usage tiers with inclining block rates and separate irrigation rates to be charged to residential water customers in the Arbor Run, Merion, Pebble Bay, and Bayleaf Master System service areas (a portion of the Aqua NC Water Rate Division) and The Cape service area (Fairways Water Rate Division). The Company stated that its pilot program proposal is contingent upon Commission approval of its proposed revenue reconciliation process specific to the pilot areas. According to Aqua NC, the purpose of the proposed revenue reconciliation process is to assure that the Company will receive its full authorized revenue requirement, no more and no less.

. . .

43. It is reasonable and appropriate that a Conservation Pilot Program be designed to maintain revenue sufficiency and stability for Aqua NC. A revenue reconciliation mechanism is appropriate to support the Company's reasonable opportunity to recover its full Commission-approved revenue requirements despite implementation of a Conservation Pilot Program.

. . .

44. For purposes of implementing the Conservation Pilot Program in a portion of the Aqua NC Water Rate Division, a revenue reconciliation process applicable only to the pilot group is in the public interest. It is reasonable and appropriate that a revenue reconciliation process as set forth by the Company be integral to the pilot program; however, such revenue reconciliation process allowed in this docket for this specific purpose is not intended to establish the process by which any future revenue reconciliation for Aqua NC or other regulated utilities related to actual consumption variances from Commission-approved levels in general rate case proceedings as allowed by N.C. [Gen. Stat.] § 62-133.12A will be calculated.

4. Aqua's Reconciliation Request is based on the second scenario presented in Aqua witness Edward Thill's Direct Exhibit 4. Under this scenario, customers were assumed to have higher-than-average consumption, and Aqua would refund all the excess revenues through a monthly bill credit over nine months.

5. In its verified responses to Commission questions, Aqua provides a sentence-by-sentence revenue reconciliation calculation based on the information set forth in witness Thill's prefiled testimony in the Sub 526 Rate Case and adds the numerical calculations for the 2021 data.

6. In the Sub 526 Rate Case, the Pilot Program annualized billing determinants were 81,972 bills and 562,713,732 gallons, resulting in a monthly average consumption per bill of 6,865 gallons. The Pilot Program service revenue requirement authorized by the Commission in the Sub 526 Rate Case was \$5,482,975, comprised of \$1,696,820 (31%) for base facility charges and \$3,786,155 (69%) for consumption charges.

7. During the 12 months of 2021, Aqua issued 83,550 bills for 579,753,300 gallons, resulting in a monthly average consumption per bill of 6,939 gallons in the pilot service areas. The actual Pilot Program service revenue was approximately \$5,691,105, consisting of \$1,729,485 for base facility charges and \$3,961,620 for consumption charges.

8. In its Reconciliation Request, Aqua compares the monthly average bill amount for consumption charges utilizing the number of bills and total consumption from the Sub 526 Rate Case (\$46.19) to the actual 12 months of 2021 (\$47.42). This comparison resulted in a revenue excess of \$1.23 per bill. Aqua initially proposed to refund a total of \$102,766.50, which is the revenue excess of \$1.23 per bill multiplied by the 83,550 actual bills issued to customers in the Pilot Program service areas in 2021. In subsequent filings with the Commission, Aqua corrects its calculation to track the methodology set forth in witness Thill's Sub 526 Rate Case testimony and in the Sub 526 Rate Case Order, resulting in a proposed refund of \$102,226.19, before interest.

9. In the Public Staff's Notice, it states that in comparison to the Pilot Program billing determinants and the revenue requirement approved in the Sub 526 Rate Case, Aqua issued 1,578 more bills for 17,039,568 more gallons in the 12 months of 2021, resulting in the collection of an additional \$208,130 of service revenue, consisting of \$32,665 for base facility charges and \$175,465 for consumption charges.

10. The Public Staff initially recommended that the entire \$208,130 (\$5,691,105 minus \$5,482,975) of service revenue in excess of the revenue requirement approved by the Commission in the Sub 526 Rate Case be refunded as a one-time, flat rate bill credit of \$29.48, plus interest pursuant to N.C.G.S. § 62-130(e). At the oral argument, the Public Staff revised its recommendation to allow Aqua to retain a portion of the revenue excess attributable to its base facility charge in the amount of \$32,665 and refund the \$175,465 of excess consumption revenue as a one-time, flat rate bill credit of \$24.86, plus interest.

11. In the Sub 526 Rate Case, Aqua witness Thill proposed issuing monthly flat rate bill credits over several months. However, the Reconciliation Request proposes issuing a one-time, flat rate bill credit to the number of Pilot Program customers existing as of December 2021. Aqua's corrected amount of refund, before interest, is a one-time

bill credit of \$14.48 per customer. The Public Staff initially recommended that the bill credit, plus interest, be issued as part of Aqua's next billing cycle, but no later than May 31, 2022. The Public Staff stated that this timing would best preserve the conservation signal the Pilot Program intended to produce. At the oral argument and in light of the time elapsed since it filed its Notice, the Public Staff recommended that the bill credit, plus interest, be issued as part of Aqua's next billing cycle, and Aqua agreed to the Public Staff's recommendation.

12. To the extent the number of customers receiving refunds is different from the 7,059 customers at the end of 2021, future reconciliations shall account for the difference so that ultimately the refund for excess revenue for 2021 will be \$102,226.19, before interest.

13. Aqua initially proposed that there should not be interest added to the excess revenue to be refunded to customers or in the alternative, that the interest rate used to calculate the interest due to customers match the Company's authorized overall rate of return of 6.81%. At the oral argument Aqua withdrew its proposal of zero interest and recommended that it pay an interest rate of 6.81% to customers on the refund. It is reasonable and appropriate to use the 6.81% interest rate to calculate interest on the refunds to customers in this proceeding.

14. It is reasonable and appropriate for Aqua to utilize the revenue reconciliation methodology set forth in Aqua witness Edward Thill's Direct Exhibit 4 and for Aqua to refund to the applicable Pilot Program customers \$102,226.19, plus interest as part of Aqua's next billing cycle.

## **DISCUSSION**

The Commission has reviewed the Reconciliation Request, the Public Staff's Notice, Aqua's Response, the parties' verified responses to the Commission's questions, oral arguments, the Sub 526 Rate Case Order, and the applicable statutes and Commission Rules.

In the Sub 526 Rate Case Order, the Commission approved a Conservation Pilot Program with inclining block rates for the Arbor Run, Merion, Pebble Bay, and Bayleaf Master System service areas. Further, the Commission concluded that an annual revenue reconciliation as set forth by the Company is an integral part of the Conservation Pilot Program.

On February 14, 2022, Aqua filed its first annual revenue reconciliation request (February 14 Request) for the Conservation Pilot Program. The February 14 Request included an affidavit showing that 2021 actual revenue for the Pilot Program service areas was \$1.23 per bill higher than used for rate design in the Sub 526 Rate Case. Aqua multiplied the \$1.23 excess revenue per bill times actual 2021 bill count of 83,550 to equal an excess revenue amount for 2021 of \$102,766.50. In its February 14 Request, Aqua proposes to refund \$14.56 per customer based on dividing the excess revenue

(\$102,766.50) by the number of year-end customer count (7,059). Aqua requests that the Commission not require the refund to customers to include interest due to the complexity of the calculation, the negligible amount of interest due, and because the Company proposes to refund the entire amount in one monthly billing versus over a nine-month period.

On April 1, 2022, the Public Staff filed a notice (April 1 Notice) that challenges the revenue reconciliation methodology of the Company and makes different recommendations. The Public Staff recommends that the entire service revenue of \$208,130 for the Pilot Program service areas in excess of the service revenue approved by the Commission in the Sub 526 Rate Case be refunded as a one-time, flat rate bill credit of \$29.48, plus interest at a rate of 10% per annum pursuant to N.C.G.S. § 62-130(e). The Public Staff reasons that the Sub 526 Rate Case Order provides that the purpose of the revenue reconciliation was to assure that Aqua receive its authorized revenue requirement, no more and no less. They note that Thill Direct Exhibit 4 in the Sub 526 rate case, which provided sample revenue reconciliation calculations for illustrative purposes, assumed no customer growth in the calculations. The Public Staff asserts that Aqua should not be permitted to retain a significant portion of the usage charge revenues associated with bills that exceeded the number of bills included in Aqua's rate design because the revenue reconciliation methodology it proposes does not address scenarios that were likely to occur, such as customer growth.

On April 8, 2022, Aqua filed a response (Aqua April 8 Response) to the Public Staff's April 1 Notice. The Company argues that the Sub 526 Rate Case Order approves a revenue reconciliation methodology "as set forth by the Company" in the Sub 526 Rate Case. Aqua cites the Sub 526 Rate Case Order as finding that the methodology set forth by the Company is based on the average per customer usage, not on the gross level of revenue. Aqua notes that the Public Staff's recommendation would impose a cap on actual revenue based on the revenue requirement used in the Sub 526 Rate Case, thereby requiring refund of all revenues from customer growth in addition to refund of revenues from increased per customer usage. The Aqua April 8 Response revises the calculation methodology from the February 14 Request to more accurately track the methodology set forth in witness Thill's testimony in the Sub 526 Rate Case. Aqua states that its method based on average per customer usage, including the usage from 2021 customer growth, would comply with the Sub 526 Rate Case Order (Finding of Fact No. 33) that the Company "receive its full authorized revenue requirement, no more and no less."

Aqua responds to the Public Staff's recommendation that the Commission apply an interest rate of 10% to the customer refunds at issue stating that Aqua's willingness to make the refunds as a one-time bill credit as opposed to over the course of nine to twelve months "mitigates and offsets any need for the Commission to require the accrual of interest." Aqua further responds that if the Commission determines it was appropriate to apply interest, Aqua requests a rate of 6.81%, the overall rate of return authorized by the Commission in the Sub 526 Rate Case, and that interest at the same rate be applied to any customer surcharges resulting from revenue under-recoveries.

On May 4, 2022, the Commission issued an order requiring the parties to file verified responses to nine questions and setting the matter for oral argument. Among those questions, the Commission observed there was a mathematical error in the Aqua April 8 Response.

Aqua filed its verified responses to the Commission questions on May 11, 2022 (Aqua May 11 Responses). The Company agreed that it had a mathematical error in the Aqua April 8 Response, and it submitted revised affidavits to show the corrected refund amount of \$102,226.19. The Aqua May 11 Responses include the following sentence-by-sentence revenue reconciliation method set forth in prefiled direct testimony of witness Thill's testimony (pages 24-25) in the Sub 526 Rate Case, as quoted by the Commission in the Sub 526 Rate Case Order, and add the numerical calculations for the 2021 data, as follows:

1. Dividing the volumetric revenue requirement by the number of bills used in determining rates provides Aqua NC with the Revenue per Bill – as Authorized.

[ $\$3,786,155$  in block revenue /  $81,972$  bills =  $\$46.19$  per bill]

2. Aqua NC would perform a similar calculation using actual data in the 12 full months following implementation of rates to determine the Revenue per Bill – Actual.

[ $\$3,961,620$  in block revenue /  $83,550$  bills =  $\$47.42$  per bill]

3. The difference between those actual and authorized averages would define the Company's Average per Customer Usage Excess or Deficit.

[ $\$47.42 - \$46.19 = \$1.23$ ]

4. Dividing that Excess or Deficit by the Revenue per Bill as Authorized provides Aqua NC's Excess or Deficit Rate.

[ $\$1.23 / \$46.19 = 2.7\%$ ]

5. The Rate is then multiplied by the originally authorized volumetric revenue to determine the value of the excess or deficit.

[ $\$3,786,155 \times 2.7\% = \$102,226.19$ ]

The Public Staff also filed its verified responses to Commission questions on May 11 (Public Staff May 11 Responses). The Public Staff argues that Aqua's revenue reconciliation calculation differed from the calculations in Thill Revised Direct Exhibit 4, Scenario 2. The Public Staff notes that several of these differences were corrected in revised affidavits filed by Aqua as Appendix A to its verified responses; however, the

Public Staff argues that Aqua's revenue reconciliation was inconsistent with the methodology of witness Thill in three respects.

First, Aqua rounded its excess rate to 2.7%, whereas Thill Direct Exhibit 4 used two decimal places. Using Thill's rounding convention would mean an excess rate of 2.66%, and therefore under the Aqua calculation, the refund amount would be \$100,711.72.

Second, Aqua divided the excess revenue amount by year-end bill count to get a one-time bill credit amount per customer, whereas the Thill Direct Exhibit 4 divided excess revenue by the actual bill count (bills over twelve months).

Third, Aqua's revenue reconciliation recognized that there was customer growth in 2021, whereas Thill Direct Exhibit 4 assumed no growth in the number of customer bills between the rate case and the hypothetical year of actual pilot experience.

The Public Staff May 11 Responses further argue that the Aqua reconciliation request was not based on average per customer usage, but instead was based on average per bill revenue, and that it is appropriate to cap Aqua's revenues at the level used in the rate case.

The parties supported their respective positions in an oral argument held on May 16, 2022 in Raleigh, North Carolina. Aqua stated that the issue of whether the revenue reconciliation would be based on average usage per customer, as the Company recommended, or on a cap on the revenue requirement approved in the Sub 526 Rate Case, as the Public Staff recommended, had been finally decided in the Sub 526 Rate Case. Aqua maintained that the Commission approved a reconciliation process "as set forth by the Company." The Company further maintained that the Public Staff's methodology would be a disincentive to conservation rates because the utility would have to refund revenues from growth, in addition to any revenue difference caused by under or over conservation by each customer, while still paying for the additional costs of serving a larger number of customers.

The Public Staff asserted that the Commission approved in the Sub 526 Rate Case a revenue reconciliation process intended to assure that the Company would receive its "full authorized revenue requirement, no more or no less." The Public Staff contended that the basis for the parties' disagreement was the Company's calculation of the Reconciliation Request in a manner that was inconsistent with the Company's stated purpose of the reconciliation process and with the methodology set out in witness Thill's Revised Direct Exhibit 4 to achieve that purpose.

The Public Staff also noted that the Company's reconciliation methodology is not based on average usage per customer but rather, on the average revenue per bill. The Public Staff asserted that using average revenue per bill enables the Company to retain average usage revenues from new customers in excess of the revenue requirement. The



Public Staff maintained that revenue reconciliation lowered the Company's risk, so it was reasonable to require a refund of revenues from customer growth.

At the oral argument, each party offered a modification to its filed position. Aqua stated that it proposed to pay 6.81% interest on the refunds and withdrew its prior zero-interest position. The Public Staff conceded that the Commission could allow Aqua to retain the base facility charge revenue from customer growth but that there still should be a refund of volumetric service revenues from customer growth. Tr. vol. 1, 34-35.

## **CONCLUSIONS**

### **A Revenue Reconciliation Process as Set Forth by Aqua is Appropriate**

Having reviewed the filings and oral arguments of the parties, the Commission concludes that the revenue reconciliation method set forth by Aqua in this proceeding is appropriate. Finding of Fact No. 44 in the Commission's Sub 526 Rate Case Order states in relevant part: "It is reasonable and appropriate that a revenue reconciliation process as set forth by the Company be integral to the pilot program . . ." Aqua's revenue reconciliation methodology was set forth in the testimony of Company witness Thill, and quoted at page 105 of the Sub 526 Rate Case Order. The parties agree as to the volumetric revenue requirement and number of bills used in the rate case, the actual volumetric revenue requirement and number of bills in 2021, and the year-end number of customers in the pilot service areas. The uncontested numbers in the methodology set forth by the Company in the Sub 526 Rate Case produce the calculation quoted above from the Aqua May 11 Responses. The Commission concludes that it is appropriate to refund to Pilot Program customers the excess 2021 volumetric revenue of \$102,226.19, as calculated using Aqua's reconciliation methodology.

In its Notice, the Public Staff recommended a process that would refund all actual revenues in excess of the revenue requirement set in the Sub 526 Rate Case. The Commission notes that the Public Staff relies in part on wording from the Sub 526 Rate Case Order to support its argument that revenues should be capped at the revenue requirement set in the rate case. In particular, Finding of Fact No. 33 states "[a]ccording to Aqua NC, the purpose of the proposed revenue reconciliation process is to assure that the Company will receive its full authorized revenue requirement, no more and no less." Finding of Fact No. 43 states "[a] revenue reconciliation mechanism is appropriate to support the Company's reasonable opportunity to recover its full Commission-approved revenue requirements despite implementation of a Conservation Pilot Program." At the oral argument, Aqua asserted that these statements must be interpreted in light of the full Sub 526 Rate Case Order — not in isolation and that the Commission intended, consistent with Aqua's testimony, to protect both the customers and the Company from unexpected revenue impacts due specifically to the implementation of conservation rates. Tr. vol. 1, 48-50. The Commission acknowledges that this conclusion is supported by the following portions of the Sub 526 Rate Case Order:

[A]s a general matter of fairness there must be a settlement process to ensure that neither the pilot customer group (as a whole) nor the Company is unduly harmed or enriched *by this program*. The intent of the revenue reconciliation is that the Company should receive its full authorized revenue requirement, no more and no less.

Tr. vol. 1, 123, *emphasis added*.

Thus, the reconciliation process is intended to limit Aqua to its full revenue requirement with respect to the impacts of the pilot conservation rates (“by this program”). It is not intended to be a true-up for unrelated variables that affect gross revenue, such as customer growth. The “full authorized revenue requirement” wording is qualified in the preceding sentence by the focus on impacts of over or underconsumption from that predicted to result from the conservation pilot rates.

The Commission concludes that Aqua’s revenue reconciliation methodology is appropriate for reconciling revenues related to the Pilot Program rather than capping the gross revenues to the rate case level as recommended by the Public Staff. The Commission acknowledges that the presence or absence of customer growth is different from the impact of conservation rates and thus outside the intended purpose of the Conservation Pilot and its related revenue reconciliation.

The Commission notes that the issue of capping revenues in the reconciliation was directly addressed in the Sub 526 Rate Case:

Witness Thill testifies that customer growth is not included in the revenue reconciliation computation. Consistent with the explicit language of House Bill 529 (Session Law 2019-88) which was signed into law on July 8, 2019, the proposed revenue reconciliation calculation is computed based on “average per customer usage.” To compute the reconciliation adjustment at a gross level of revenue, rather than at a per customer average level, would ignore that a portion of future revenue may be attributed to customers added after the test year . . . .

Sub 526 Rate Case Order at 105.

The Commission gives substantial weight to the testimony of Aqua witness Thill in the Sub 526 Rate Case as it was used as the basis for the Commission’s decision regarding the revenue reconciliation method. In the Sub 526 Rate Case Order, the Commission approved the reconciliation method “as set forth by the Company.” The method set forth by witness Thill in the Sub 526 Rate Case involves:

1. Dividing the volumetric revenue requirement by the number of bills used in determining rates provides Aqua NC with the Revenue per Bill — as Authorized.

2. Aqua NC would perform a similar calculation using actual data in the 12 full months following implementation of rates to determine the Revenue per Bill — Actual.

Aqua asserted that what witness Thill meant, and the Commission approved, is that the refund amount should be based on average per customer usage and not include excess revenues due to customer growth.

The Public Staff argued that the examples in Thill Direct Exhibit 4 in the Sub 526 Rate Case showed no customer growth, and therefore, the reconciliation calculation should refund revenues based on total revenue requirement and not on average per customer usage. The Commission does not agree with the Public Staff's interpretation for several reasons. First, the Commission finds that witness Thill made clear throughout his testimony that he was recommending a calculation based on average per customer usage, and the Commission approved that methodology. The Commission concludes that the Public Staff's interpretation of Thill Direct Exhibit 4 would be inconsistent with the need for a reconciliation based on average per customer usage. Second, the Commission rejects the Public Staff's reasoning that Thill Direct Exhibit 4 shows the Company proposed a method that requires refund of all growth revenues. The Commission notes that Thill Direct Exhibit 4 shows in Scenario 2 an example where actual average per customer usage is 1% greater than anticipated in the rate case, without customer growth. The Commission acknowledges that the assumptions in the exhibit do not preclude actual experience that is different and that it would be difficult to predict in an example provided at the time of the rate case the actual experience that will occur in the year after the rate case.

In the Sub 526 Rate Case, the Commission noted that N.C.G.S. § 62-133.12A authorized adoption of a rate adjustment mechanism to "track and true up variations in *average per customer usage*." That observation was immediately followed with "[t]he Commission concludes that it is reasonable and appropriate that a revenue reconciliation process *as set forth by the Company* be integral to the pilot program...." Sub 526 Rate Case Order at 124, *emphasis added*. The Commission recognizes the connection between these two sentences in the Sub 526 Rate Case Order and agrees with Aqua that the statutory approval for reconciliations based on average per customer usage is the methodology proposed by the Company.

At the oral argument, Aqua asserted that the issue of whether to reconcile pilot service area revenues on average per customer usage or on total revenue requirement was disputed by the parties and decided by the Commission in the Sub 526 Rate Case. Clearly, the Commission did not impose a cap of the nature proposed by the Public Staff in the Sub 526 Rate Case. Aqua stated that the Public Staff did not file exceptions to the Sub 526 Rate Case Order, did not appeal that order, and has not shown a compelling change of circumstances that might support reconsideration of that order. Tr. vol. 1, 12. The Commission gives significant weight to Aqua's statements given at the oral argument and concludes that the issue was litigated in the Sub 526 Rate Case and should not be

relitigated in the same proceeding with the same parties. The Sub 526 Rate Case Order and the conclusions reached therein remain in full force and effect.

Therefore, for the reasons set forth above, the Commission finds that the revenue reconciliation methodology as recommended by Aqua is appropriate.

### **The Public Staff Recommendation Would be a Disincentive to Conservation Rates and Undermine Public Policy**

At the oral argument, Aqua indicated that a revenue reconciliation that capped the pilot area revenues to the revenue requirement set in the rate case, as proposed by the Public Staff, would be a disincentive to conservation rates. Aqua explained that customer growth creates additional revenues and additional costs and that if the Company must refund the additional revenues but still incur the additional costs, it will necessarily realize a lower rate of return than authorized, at least with regard to the customer growth. Aqua asserted that water utilities that expect customer growth are not going to support conservation rates where the reconciliation method reduces the rate of return below the level authorized by the Commission.

The Commission has sought to advance public policy by seeking comments on “rate design proposals that may better achieve revenue sufficiency and stability while also sending appropriate efficiency and conservation signals to consumers.” Order Establishing Generic Proceeding and Requiring Comments, *Investigation of Rate Design for Major Water Utilities*, No. W-100, Sub 59, 2 (N.C.U.C. Mar. 20, 2019). Aqua’s Conservation Pilot Program and revenue reconciliation proposal in the Sub 526 rate case are a positive response to the Commission’s public policy interest in exploring effective conservation rates. The Commission recognizes that a reconciliation methodology that refunds revenues from customer growth in addition to any excess revenues caused by change in average per customer usage would not support the purpose of conservation rates and would undermine Aqua’s support for conservation rates, which the Commission seeks to promote as a matter of public policy. Additionally, the Commission acknowledges that the message conveyed to customers receiving a refund due to factors unrelated to conservation, in this instance due to customer growth, would counteract the goal of changing usage behavior for the purpose of conservation through the use of tiered rates. Therefore, for the reasons herein, the Commission finds that a revenue reconciliation methodology based on total revenue requirement, as proposed by the Public Staff, is inappropriate for use in this proceeding.

### **Refund Modifications Proposed by the Parties**

The Commission notes that while the methodology for calculating excess revenue to be refunded was established in the Sub 526 Rate Case through the testimony of Aqua witness Thill and approved in the Sub 526 Rate Case Order, there are reconciliation matters raised by the parties that are appropriate for Commission review and decision.

First is the question of whether Aqua should pay interest on the refunds to customers. Aqua initially proposed zero interest, with a second proposal to pay interest at 6.81% — the overall rate of return authorized by the Commission in the Sub 526 Rate Case. The Public Staff proposed payment on the refunds at a 10% interest rate. At the oral argument Aqua withdrew its zero-interest recommendation and proposed an interest rate of 6.81%. The Company noted that a 10% interest rate, as suggested by the Public Staff, would force it to pay an interest rate higher than the rate of return it was authorized to earn. The Public Staff argued that a 10% interest rate is commonly approved by the Commission for customer refunds, although at the oral argument they also stated, “we can understand how the Commission could end up at a 6.81 percent.” Tr. vol. 1, 35. The Commission notes that under N.C.G.S. § 62-130(e), it may, but is not required, to approve an interest rate up to 10% per annum. Aqua asserted that an interest rate of 6.81% is reasonable in the present case because it treats the parties evenhandedly in that Aqua must pay interest at a rate equal to the return that the Company was given the opportunity to earn. The Public Staff asserts in its Notice that interest applied at a rate of 10% per annum is consistent with the Commission’s Order Granting Partial Rate Increase and Requiring Customer Notice issued on April 15, 2005, in Docket No. W-354, Sub 266 (Sub 266 Rate Case). In that order, the Commission stated:

[T]hat the appropriate interest rate on the refunds is 10%, compounded annually, consistent with the refund of gross-up in other cases. As discussed by the Commission in Docket No. E-7, Sub 501, since 1981, when G.S. 62-130(e) was enacted, the Commission has consistently used 10% to calculate interest on utility refunds. Since that time, interest rates have moved up and down. The Commission has used 10% notwithstanding the level of interest rates in the economy on the theory that 10% provides for adequate compensation over the long term considering the fact that a policy of tracking the general level of interest rates would lead to denial of fair compensation in times when the interest rates exceed the statutory cap of 10%. In addition, the use of a 10% interest rate is also appropriate because the recipient of the return might have been able to avoid incurring higher cost debt, such as credit card debt, which typically involves an interest rate of more than 10%. Accordingly, the Commission is of the opinion that 10% continues to be a just and reasonable rate.

The Commission is not persuaded by the Public Staff’s assertion that an interest rate of 6.81% would be inconsistent with the Commission’s decision in the Sub 266 Rate Case Order. The Commission notes that the refund referenced in the Sub 266 Rate Case Order pertains to a gross up of the collection of contributions in aid of construction (CIAC) resulting from changes to the Tax Reform Act of 1986. The Commission notes that the purpose of the refunds in that case was to address overcollection due to a change in tax law, whereas the purpose of the refund for the revenue reconciliation in the current proceeding is to assure that the Company will receive its full authorized revenue requirement, no more and no less. The Commission agrees with Aqua and concludes that an interest rate of 6.81% per annum is reasonable because it requires the Company

to pay interest equal to the rate of return it was given the opportunity to earn in the Sub 526 rate case.

Second is the offer by the Public Staff at the oral argument to modify its proposal so that Aqua would refund only the volumetric portion of the revenue from customer growth (approximately \$175,465) and would retain the base facilities charge revenue from customer growth (approximately \$32,665). The Commission notes that the Public Staff offered to modify its proposal at the oral argument in the spirit of compromise; however, the Commission concludes that the Public Staff's offer would still be inconsistent with the reconciliation methodology approved in the Sub 526 Rate Case Order and public policy as discussed in the preceding paragraphs.

Third is the Public Staff's position that Aqua departed from the methodology set forth in the Sub 526 Rate Case Order by calculating the excess revenue rate at 2.7% instead of carrying it out an additional decimal place as was shown on Thill Direct Exhibit 4. The Commission notes that as set forth in the Public Staff May 11 Responses, the use of an additional decimal place would reduce the Company's excess revenue calculation from \$102,226.19 to \$100,711.72. In other words, the discrepancy noted by the Public Staff would mean \$1,514.47 less to refund to customers. At the oral argument, Aqua agreed that Thill Direct Exhibit 4 used an additional decimal place that was omitted in the rounding of the Company's refund calculation and stated that it did not have a position on how the Commission should resolve that difference. The Commission concludes that the calculation by Aqua resulting in an excess revenue amount of \$102,226.19 is reasonable, notwithstanding the rounding that was not in Thill Direct Exhibit 4, because the difference in the refund amount is immaterial.

Fourth, as the Public Staff asserted, Thill Direct Exhibit 4 recommended refunds spread across several months, whereas the Aqua revenue reconciliation proposed a one-time bill credit. The Commission notes that the Public Staff is correct that the Company's recommendation is a discrepancy from the process "as set forth by the Company" in the rate case. However, the Commission concludes that this discrepancy is reasonable because (a) it was recommended by the Public Staff and accepted by Aqua, and (b) it will result in the full refund being credited to customers sooner than the approach in Thill Direct Exhibit 4.

On May 4, 2022, the Commission issued an order that posed certain questions to the parties regarding the reconciliation methodology. Question No. 1 includes the following inquiry: "Is the correct calculation  $\$3,786,155 \times 2.7\% = \$102,226.19$  which would then be divided by the year-end 2021 bill count of 7,059 to equal a one-time refund of \$14.48 per customer before interest, if any?" Aqua answered "yes." However, the Commission notes that customers who are in the pilot service areas at the time refunds will be made are not entirely the same as the 7,059 customers who were in the pilot service areas on December 31, 2021. Consequently, the amount of refund issued as bill credits to the customers in the pilot service areas could be more or less than the \$102,226.19 of excess revenues. The Commission notes that this situation was anticipated by witness Thill's testimony in the Sub 526 Rate Case: "Any over or under

recovery as a result of fluctuations between the actual components of the calculation and the assumed components in determining the surcredits/surcharges would roll into the subsequent period's calculation of the excess/deficit." Sub 526 Rate Case Order at 105. The Commission concludes that to the extent the number of customers receiving refunds is different from the 7,059 customers at the end of 2021, future reconciliations shall account for the difference so that ultimately the refund for excess revenue for 2021 will be \$102,226.19 before interest. This conclusion is consistent with the methodology proposed by witness Thill in the Sub 526 Rate Case, and it is reasonable.

### SUMMARY

For the reasons set forth herein, and based on the facts of record in this case regarding the implementation of a Conservation Pilot Program revenue reconciliation, the Commission concludes that the revenue reconciliation methodology proposed by Aqua is reasonable and appropriate; that the correct amount to refund by one-time bill credit is \$102,226.19, plus interest at the rate of 6.81% per annum; and the bill credit should be made in the next available billing cycle.

IT IS, THEREFORE, ORDERED as follows:

1. That Aqua shall implement the recommended Conservation Pilot Program refund set forth herein, to be issued as part of Aqua's next billing cycle; and
2. That Aqua shall mail to each of the customers in the Conservation Pilot Program service areas with the next regularly scheduled customer billing a copy of the attached Notice to Customers, and Aqua shall file the attached Certificate of Service, properly signed and notarized, not later than 45 days after the issuance of this Order.

ISSUED BY ORDER OF THE COMMISSION.

This the 1st day of August, 2022.

NORTH CAROLINA UTILITIES COMMISSION



Erica N. Green, Deputy Clerk

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. W-218, SUB 526A

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	
Application by Aqua North Carolina, Inc.,	)	NOTICE TO CUSTOMERS OF
202 MacKenan Court, Cary, North Carolina	)	CONSERVATION PILOT
27511, for Approval of Annual Adjustment to	)	PROGRAM REFUND
Conservation Pilot Program Revenue	)	
Reconciliation Charge/Credit	)	

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission has issued an order authorizing Aqua North Carolina, Inc. to issue a one-time bill credit in the amount of \$14.48, plus interest to each water utility customer in the Arbor Run, Merion, Pebble Bay, and Bayleaf Master System service areas. The purpose of this bill credit is to refund surplus revenues received by Aqua North Carolina, Inc., due to greater average per customer usage than anticipated under the Conservation Pilot Program.

The Commission's Order setting forth its findings and conclusions concerning this proceeding can be viewed on the Commission's website at [www.ncuc.net](http://www.ncuc.net), under the "Docket Search" feature, utilizing Docket No. "W-218 Sub 526A".

ISSUED BY ORDER OF THE COMMISSION.

This the 1st day of August, 2022.

NORTH CAROLINA UTILITIES COMMISSION



Erica N. Green, Deputy Clerk



CERTIFICATE OF SERVICE

I, \_\_\_\_\_, mailed with sufficient postage or hand delivered to all affected customers copies of the attached Notice to Customers issued by the North Carolina Utilities Commission in Docket No. W-218, Sub 526A, and the Notice was mailed or hand delivered by the date specified in the Order.

This the \_\_\_\_ day of \_\_\_\_\_, 2022.

By: \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Aqua North Carolina, Inc.

The above-named Applicant, \_\_\_\_\_, personally appeared before me this day and, being first duly sworn, says that the required Notice to Customers was mailed or hand delivered to all affected customers, as required by the Commission Order dated \_\_\_\_\_ in Docket No. W- 218, Sub 526A.

Witness my hand and notarial seal, this the \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Printed Name

(SEAL) My Commission Expires: \_\_\_\_\_  
Date