

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. W-100, SUB 61

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of | | |
| Petition for Rulemaking to Implement |) | PETITION FOR ORDER |
| N.C. Gen. Stat. § 62-133.12A, North |) | ESTABLISHING |
| Carolina Session Law 2019-88 (House |) | RULEMAKING PROCEEDING |
| Bill 529) |) | |

NOW COMES THE PUBLIC STAFF – North Carolina Utilities Commission (Public Staff), by and through its Executive Director, Christopher J. Ayers, and petitions the Commission to establish a rulemaking proceeding to implement N.C. Gen. Stat. § 62-133.12A, North Carolina Session Law 2019-88 (House Bill 529), and, after receiving comments from interested parties, to adopt the rules attached hereto as Exhibits A and B. In support of this petition, the Public Staff respectfully shows unto the Commission:

1. N.C. Gen. Stat. § 62-133.12A (attached as Exhibit C) entitled, “Customer usage tracking rate adjustment mechanisms for water and wastewater rates” authorized the Commission to “adopt, implement, modify, or eliminate” a rate adjustment mechanism for tracking and truing-up variations in customer usage from the levels approved in the general rate case proceeding. Prior to the enactment of N.C. Gen. Stat. § 62-133.12A, the Commission did not have the authority for this type of rate adjustment mechanism for water and wastewater utilities.

2. N.C. Gen. Stat. § 62-133.12A provides for Commission approval of a rate adjustment mechanism by customer classification and rate schedule for both

water and wastewater, upon finding the rate adjustment mechanism is in the public interest.

3. The Public Staff draft rules are Rule R7-40 for water (Exhibit A) and Rule R10-27 for sewer (Exhibit B).

Detailed Summary of the Proposed Rules

4. Paragraph (a) of each draft rule states the scope and purpose of the rule.

5. Paragraph (b) states the rule definitions.

6. Paragraph (c) states pursuant to the requirement in N.C. Gen. Stat. § 62-133.12A, the procedure for water and sewer utilities to request Commission approval of the water usage adjustment (WUA) and sewer usage adjustment (SUA) mechanisms is in a general rate case. Subparagraphs require a description of rate groups, a billing analysis, and evidence that the mechanism is in the public interest.

7. Paragraph (d) provides that in the general rate case the customers will be notified of the applied for WUA and SUA mechanisms.

8. Paragraph (e) provides for Commission review and hearing on the applied for WUA and SUA mechanisms.

9. Paragraph (f) provides that the utility shall petition to initiate the WUA and/or SUA after the 12-month period following the effective date of rates approved by the Commission in conjunction with the approval of a WUA and/or SUA mechanism in a general rate case proceeding.

10. Paragraph (g) provides the calculation components for the charge or credit.

11. Paragraph (h) provides for the request for annual usage adjustments.

12. Paragraph (i) provides the calculation components for the experience modification factor.

13. Paragraph (j) provides for Public Staff audits, utility filed annual reconciliations, and customer refunds for overcollections, pursuant to G.S. 62-130(e).

14. Paragraph (k) provides that each utility must file with the Commission within 15 days after each calendar month a monthly report in the format prescribed by the Commission.

15. Paragraph (l) provides that the Commission may eliminate or modify the WUA and/or SUA if found not to be in the public interest.

16. Paragraph (m) provides the utility has the burden of proof that the usage adjustment mechanism is in the public interest and the correctness and reasonableness of any WUA or SUA.

WHEREFORE, the Public Staff prays:

1. That the Commission issue an order establishing a rulemaking proceeding on the implementation of N.C. Gen. Stat. § 62-133.12A, Session Law 2019-88;

2. That the Commission adopt the proposed rules attached hereto as Exhibits A and B, with such modifications as may be appropriate in light of comments presented at the rulemaking proceeding; and

3. For such other and further relief as the Commission may deem just and proper.

Respectfully submitted this the 31st day of October, 2019.

PUBLIC STAFF
Christopher J. Ayers
Executive Director

Electronically submitted
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R7-40 WATER USAGE ADJUSTMENT MECHANISM

(a) Scope of Rule.—This rule provides the procedure for the approval and administration of a rate adjustment mechanism pursuant to G.S. 62-133.12A to allow a utility to track and true-up variations in customer water usage from levels approved by the Commission in the most recent general rate case proceeding. This rule excludes flat rate customers and purchased water customers.

(b) Definitions.—As used in this rule:

(1) “Water Usage Adjustment Charge or Credit” means an increment or decrement adjustment to the applicable usage rate that allows a utility to recover or credit the revenue variations attributable to usage variations.

(2) “Water system adjustment or WUA mechanism” means a rate adjustment mechanism approved by the Commission in a general rate case pursuant to G.S. 62-133.12A.

(3) “WUA Period” means the 12-month period beginning the first full month following the effective date of rates approved by the Commission in conjunction with the approval of a WUA mechanism in a general rate case proceeding.

(c) Request for Water Usage Adjustment Mechanism.—A utility seeking approval of a WUA mechanism shall include in its application for a general rate increase under G.S. 62-133 and Commission Rule R1-17 the following:

(1) A description of the customer classifications and rate schedules the proposed WUA mechanism would include and the criteria to group customers in a fair and reasonable manner.

(2) A three-year billing data analysis that includes a detailed breakdown of the monthly active customer counts and monthly usage data by blocks of 1,000 gallons for each year, customer classification, and rate schedule; and

(3) Testimony, affidavits, exhibits, or other evidence demonstrating that a WUA mechanism is in the public interest.

(4) Any other information required by the Commission.

(d) Customer Notice.--The notice to customers of the utility's general rate case application shall include the proposed WUA mechanism.

(e) General Rate Case Review.--Following notice and hearing, the Commission shall approve a WUA mechanism only upon a finding that it is in the public interest.

(f) Initiation of Adjustment.--Once a WUA mechanism is approved and subsequent to the WUA period, the utility shall file a request for authority to impose the water usage adjustment charge pursuant to the mechanism, to be effective no less than 60 days after filing the request. The Company shall also provide a copy of the request to the Public Staff. Prior to the effective date, the Public Staff shall schedule the request for Commission consideration at the regularly scheduled staff conference and recommend that the Commission issue an order approving, modifying and approving, or rejecting the proposed water usage adjustment

charge. The Public Staff shall formally notify the Commission at least 15 days in advance of the date that the request shall be scheduled for Commission consideration at the regularly scheduled staff conference.

(g) Computation of WUA Charge/Credit.–

(1) The WUA Charge/Credit shall be expressed as an increment/decrement calculated to the nearest whole cent per 1,000 gallons and shall be applied to the usage rate under the utility's applicable service rates and charges.

(2) The WUA Charge/Credit shall be computed for each customer classification and rate schedule as follows:

- a. Commission approved service revenue shall equal the annualized consumption in thousands of gallons multiplied by the Commission authorized usage rate from the most recent general rate case;
- b. WUA period service revenue shall equal actual consumption during the 12-month WUA Period multiplied by the presently authorized usage rate;
- c. WUA Revenue Variation shall equal the Commission approved service revenue less the WUA Period revenue;
- d. WUA Charge/Credit shall be an increment/decrement equal to the WUA Revenue Variation divided by the annualized consumption from Section (a) above.

e. If a WUA Period is bifurcated by a rate case order with a new annualized consumption and/or authorized usage rate, the Commission approved service revenue, calculated according to Section (a) above, shall be prorated for the months of service under the applicable Commission approved service revenue.

(h) Annual Adjustments.—A utility shall file a request for a WUA annually after the first implementation of a WUA Charge/Credit after completion of a general rate case proceeding.

(1) The calculation and the supporting data for an annual adjustment shall be filed with the Commission within 15 days after the end of the WUA Period.

(2) The procedural requirements set forth in subsection (f) of this Rule shall apply to requests for annual adjustments.

(i) Experience Modification Factor.—The WUA shall be modified through the use of an experience modification factor (EMF) that reflects the difference between the WUA Revenue Variation and the revenues that were actually realized under the WUA Charge/Credit during the WUA Period. The EMF shall remain in effect for a 12-month period. Pursuant to G.S. 62-130(e), any over-collection of usage adjustment mechanism revenues shall be refunded to a utility's customers through operation of the EMF shall include an amount of interest at such rate as the Commission determines to be just and reasonable, not to exceed the maximum statutory rate.

(j) Audit and Reconciliation.—The WUA shall be subject to the following:

(1) Within 15 days following the end of each WUA Period, each utility shall file a report, in a format prescribed by the Commission, reconciling its actual gallons billed, the actual service revenues, actual WUA Charge revenues, and EMF computation, for each customer classification and rate schedule.

(2) The Public Staff shall audit the utility's actual gallons billed, the actual services revenues, actual WUA Charge revenues, and EMF computation, and shall file a report on its audit no later than 45 days after the end of the WUA Period of the utility.

(k) Monthly Filings with the Commission.—Within 15 days after the end of each full calendar month, the utility shall file the following reports in a format prescribed by the Commission:

(1) A monthly earnings report consisting of the following:

- a. A balance sheet and income statement for the calendar month and calendar year to date for the utility;
- b. A statement of per books net operating income for the calendar month and calendar year to date for each rate division of the utility based on North Carolina ratemaking;
- c. The number of customers and gallons sold for each month of the calendar quarter for each rate division, customer classification, and rate type;

d. The total revenues for each system excluding flat rate and purchased water systems.

(2) A monthly report of WUA collections/payments from/to customers consisting of the amounts collected/paid for the calendar month for each customer classification and rate schedule (i.e. uniform residential, uniform commercial, standalone, etc.).

(l) Elimination or Modification of WUA Mechanism.—After notice to the utility and opportunity to be heard, the Commission may eliminate or modify any previously authorized WUA mechanism upon a finding that it is not in the public interest.

(m) Burden of Proof.—The burden of proof as to whether a WUA mechanism is in the public interest and the correctness and reasonableness of any WUA Charge shall be on the utility.

(NCUC Docket No. W-100, Sub 60, XX/XX/20XX)

R10-27 SEWER USAGE ADJUSTMENT MECHANISM

(a) Scope of Rule.—This rule provides the procedure for the approval and administration of a rate adjustment mechanism pursuant to G.S. 62-133.12A to allow a utility to track and true-up variations in customer sewer usage from levels approved by the Commission in the most recent general rate case proceeding. This rule excludes flat rate customers and purchased bulk sewer treatment customers.

(b) Definitions.—As used in this rule:

(1) “Sewer Usage Adjustment Charge or Credit” means an increment or decrement adjustment to the applicable usage rate that allows a utility to recover or credit the revenue variations attributable to usage variations.

(2) “Sewer system adjustment or SUA mechanism” means a rate adjustment mechanism approved by the Commission in a general rate case pursuant to G.S. 62-133.12A.

(3) “SUA Period” means the 12-month period beginning the first full month following the effective date of rates approved by the Commission in conjunction with the approval of a SUA mechanism in a general rate case proceeding.

(c) Request for Sewer Usage Adjustment Mechanism.—A utility seeking approval of a SUA mechanism shall include in its application for a general rate increase under G.S. 62-133 and Commission Rule R1-17 the following:

(1) A description of the customer classifications and rate schedules the proposed SUA mechanism would include and the criteria to group customers in a fair and reasonable manner.

(2) A three-year billing data analysis that includes a detailed breakdown of the monthly active customer counts and monthly usage data by blocks of 1,000 gallons for each year, customer classification, and rate schedule; and

(3) Testimony, affidavits, exhibits, or other evidence demonstrating that a SUA mechanism is in the public interest.

(4) Any other information required by the Commission.

(d) Customer Notice.--The notice to customers of the utility's general rate case application shall include the proposed SUA mechanism.

(e) General Rate Case Review.--Following notice and hearing, the Commission shall approve a SUA mechanism only upon a finding that it is in the public interest.

(f) Initiation of Adjustment.--Once a SUA mechanism is approved and subsequent to the SUA period, the utility shall file a request for authority to impose the sewer usage adjustment charge pursuant to the mechanism, to be effective no less than 60 days after filing the request. The Company shall also provide a copy of the request to the Public Staff. Prior to the effective date, the Public Staff shall schedule the request for Commission consideration at the regularly scheduled staff conference and recommend that the Commission issue an order approving, modifying and approving, or rejecting the proposed sewer usage adjustment

charge. The Public Staff shall formally notify the Commission at least 15 days in advance of the date that the request shall be scheduled for Commission consideration at the regularly scheduled staff conference.

(g) Computation of SUA Charge/Credit.–

(1) The SUA Charge/Credit shall be expressed as an increment/decrement calculated to the nearest whole cent per 1,000 gallons and shall be applied to the usage rate under the utility's applicable service rates and charges.

(2) The SUA Charge/Credit shall be computed for each customer classification and rate schedule as follows:

- a. Commission approved service revenue shall equal the annualized consumption in thousands of gallons multiplied by the Commission authorized usage rate from the most recent general rate case;
- b. SUA period service revenue shall equal actual consumption during the 12-month SUA Period multiplied by the presently authorized usage rate;
- c. SUA Revenue Variation shall equal the Commission approved service revenue less the SUA Period revenue;
- d. SUA Charge/Credit shall be an increment/decrement equal to the SUA Revenue Variation divided by the annualized consumption from Section (a) above.

e. If a SUA Period is bifurcated by a rate case order with a new annualized consumption and/or authorized usage rate, the Commission approved service revenue, calculated according to Section (a) above, shall be prorated for the months of service under the applicable Commission approved service revenue.

(h) Annual Adjustments.—A utility shall file a request for a SUA annually after the first implementation of a SUA Charge/Credit after completion of a general rate case proceeding.

(1) The calculation and the supporting data for an annual adjustment shall be filed with the Commission within 15 days after the end of the SUA Period.

(2) The procedural requirements set forth in subsection (f) of this Rule shall apply to requests for annual adjustments.

(i) Experience Modification Factor.—The SUA shall be modified through the use of an experience modification factor (EMF) that reflects the difference between the SUA Revenue Variation and the revenues that were actually realized under the SUA Charge/Credit during the SUA Period. The EMF shall remain in effect for a 12-month period. Pursuant to G.S. 62-130(e), any over-collection of usage adjustment mechanism revenues shall be refunded to a utility's customers through operation of the EMF shall include an amount of interest at such rate as the Commission determines to be just and reasonable, not to exceed the maximum statutory rate.

(j) Audit and Reconciliation.—The SUA shall be subject to the following:

(1) Within 15 days following the end of each SUA Period, each utility shall file a report, in a format prescribed by the Commission, reconciling its actual gallons billed, the actual service revenues, actual SUA Charge revenues, and EMF computation, for each customer classification and rate schedule.

(2) The Public Staff shall audit the utility's actual gallons billed, the actual services revenues, actual SUA Charge revenues, and EMF computation, and shall file a report on its audit no later than 45 days after the end of the SUA Period of the utility.

(k) Monthly Filings with the Commission.—Within 15 days after the end of each full calendar month, the utility shall file the following reports in a format prescribed by the Commission:

(1) A monthly earnings report consisting of the following:

- a. A balance sheet and income statement for the calendar month and calendar year to date for the utility;
- b. A statement of per books net operating income for the calendar month and calendar year to date for each rate division of the utility based on North Carolina ratemaking;
- c. The number of customers and gallons sold for each month of the calendar quarter for each rate division, customer classification, and rate type;

d. The total revenues for each system excluding flat rate and purchased bulk sewer treatment systems.

(2) A monthly report of SUA collections/payments from/to customers consisting of the amounts collected/paid for the calendar month for each customer classification and rate schedule (i.e. uniform residential, uniform commercial, standalone, etc.).

(l) Elimination or Modification of SUA Mechanism.—After notice to the utility and opportunity to be heard, the Commission may eliminate or modify any previously authorized SUA mechanism upon a finding that it is not in the public interest.

(m) Burden of Proof.—The burden of proof as to whether a SUA mechanism is in the public interest and the correctness and reasonableness of any SUA Charge shall be on the utility.

(NCUC Docket No. W-100, Sub 60, XX/XX/20XX)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

SESSION LAW 2019-88
HOUSE BILL 529

AN ACT PROVIDING THAT THE UTILITIES COMMISSION MAY ADOPT, IMPLEMENT, MODIFY, OR ELIMINATE A RATE ADJUSTMENT MECHANISM FOR WATER OR WASTEWATER PUBLIC UTILITIES TO TRACK AND TRUE-UP VARIATIONS IN AVERAGE PER CUSTOMER USAGE FROM LEVELS APPROVED IN THE GENERAL RATE CASE PROCEEDING; REQUIRING THE COMMISSION FOR PUBLIC HEALTH TO ADOPT RULES CONCERNING THE CONSTRUCTION AND OPERATION OF ARTIFICIAL SWIMMING LAGOONS; AND REQUIRING THE COMMISSION FOR PUBLIC HEALTH TO STUDY THE REQUIREMENT FOR A PERMANENTLY AFFIXED PHONE AT POOLS FOR EMERGENCY PURPOSES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 62 of the General Statutes is amended by adding a new section to read as follows:

"§ 62-133.12A. Customer usage tracking rate adjustment mechanisms for water and wastewater rates.

In setting rates for a water and wastewater utility in a general rate proceeding under G.S. 62-133, the Commission may adopt, implement, modify, or eliminate a rate adjustment mechanism for one or more of the company's rate schedules to track and true-up variations in average per customer usage from levels approved in the general rate case proceeding. The Commission may adopt a rate adjustment mechanism only upon a finding by the Commission that the mechanism is appropriate to track and true-up variations in average per customer usage by rate schedule from levels adopted in the general rate case proceeding and the mechanism is in the public interest."

SECTION 2.(a) G.S. 130A-280 reads as rewritten:

"§ 130A-280. Scope.

This Article provides for the regulation of public swimming pools in the State as they may affect the public health and safety. As used in this Article, the term "public swimming pool" means any structure, chamber, or tank containing an artificial body of water used by the public for swimming, diving, wading, recreation, or therapy, together with buildings, appurtenances, and equipment used in connection with the body of water, regardless of whether a fee is charged for its use. The term includes municipal, school, hotel, motel, apartment, boarding house, athletic club, or other membership facility pools and ~~spas~~, spas, and artificial swimming lagoons. As used in this Article, an "artificial swimming lagoon" means any body of water used for recreational purposes with more than 20,000 square feet of surface area, an artificial liner, and a method of disinfectant that results in a disinfectant residual in the swimming zone that is protective of the public health. This Article does not apply to a private pool serving a single family dwelling and used only by the residents of the dwelling and their guests. This Article also does not apply to therapeutic pools used in physical therapy programs operated by medical facilities licensed by the Department or operated by a licensed physical therapist, nor to therapeutic chambers drained, cleaned, and refilled after each individual use."



SECTION 2.(b) No later than December 1, 2019, the Commission for Public Health shall adopt rules governing the construction and operation of artificial swimming lagoons, as defined in G.S. 130A-280, as enacted by Section 2(a) of this act, pursuant to Part 10 of Article 8 of Chapter 130A of the General Statutes.

SECTION 3. The Commission for Public Health shall study the requirements of 15A NCAC 18A .2530(f), which requires that all swimming pools have a telephone capable of directly dialing 911 or other emergency notification system, which telephone is permanently affixed to a location inside or within 75 feet of the pool enclosure and is accessible to all pool users. The Commission shall examine the need for a dedicated permanently affixed telephone in light of widespread cellular telephone availability, and, at a minimum, the Commission shall examine the need for and advisability of requiring closure of pools where a dedicated permanently affixed telephone is temporarily out of service due to technical issues. The Commission shall submit a report of the study's findings and recommendations to the Joint Legislative Oversight Committee on Health and Human Services no later than March 1, 2020.

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of June, 2019.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Sarah Stevens
Speaker Pro Tempore of the House of Representatives

s/ Roy Cooper
Governor

Approved 11:47 a.m. this 8th day of July, 2019