STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. W-218, SUB 526

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 Its Service Areas in North Carolina

CAROLINA MEADOWS, INC.'S
REPLY IN SUPPORT OF ITS PETITION TO INTERVENE

NOW COMES Carolina Meadows, Inc. ("Carolina Meadows") and submits the following Reply to the Responses filed by Aqua North Carolina, Inc. ("Aqua") and the Commission's Public Staff (the "Public Staff") in Opposition to Carolina Meadows' Petition for Leave to Intervene Out of Time and for an Order Declaring Invalid the Parties' Partial Settlement Agreement and Stipulation, or, In the Alternative, to Open a Complaint Docket Against Aqua North Carolina, Inc. (the "Petition"), filed on August 14, 2020.

ARGUMENT

I. Aqua And The Public Staff Admit They Have Singled Out Carolina Meadows For Individual Treatment.

Aqua and the Public Staff admit that their Stipulation[1] singles out Carolina Meadows—individually and by name—for an increase in its base facility charges.

[1] *See* Partial Settlement Agreement and Stipulation, between Aqua and the Public Staff, entered July 2, 2020 (the "Stipulation").

Accordingly, there cannot be any dispute that the parties have sought to engage in individual, rather than general, rate making by determining the rates that Carolina Meadows must pay for sewer service on an individual basis. Thus, as long as the Stipulation concerning Carolina Meadows remains part of the case, Carolina Meadows should be allowed to intervene and participate as a party.

Indeed, both Aqua and the Public Staff acknowledge that their Stipulation, if approved, would determine Carolina Meadows' rights by increasing Carolina Meadows' base facility charges on an individual basis to an amount equivalent to 186 REUs (a 372% increase). Further, while the parties now claim that they have not reached any agreement regarding future rate cases,[2] the Public Staff's witness, Charles Junis, stated the exact opposite in his hearing testimony, explaining: "[T]he 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 of 372 REUs*" (a 744% increase). (*See* Junis Hr'g Test., Tr. Vol. 5 pp. *75-76* (emphasis added)).

Put simply, Aqua and the Public Staff have sought to have the Commission determine Carolina Meadows' sewer rates on an individual basis, without providing Carolina Meadows prior notice or an opportunity to participate.

In their Responses, Aqua and the Public Staff attempt to cut off Carolina Meadows' effort to intervene and be heard regarding their Stipulation by claiming that they have merely sought to "correct and properly calculate" Carolina Meadows' base facility charges,

[2] *See* Public Staff Resp. p. 13 (Claiming, "Aqua and the Public Staff have not agreed to the number of REUs or other billing practices regarding Carolina Meadows in the Company's next general rate case.")

which they claim were "incorrectly designed" in prior rate cases on the basis of a six-inch *sewer* meter, rather than the *water* meters Carolina Meadows maintains for water service from Chatham County. (*See* Aqua Resp., pp. 9-10; Public Staff Resp., p. 13). But there can be no dispute that this represents a *change* in the methodology for calculating Carolina Meadows' individual sewer rates, and ultimately a change in the rate itself. Indeed, Aqua concedes that, under the rates approved by the Commission's Orders on May 2, 2014 in Docket No. W-218, Sub 363 and December 18, 2018, Docket No. W-218, Sub 497, Carolina Meadows should have been billed base facility charges for a six-inch meter, but that Aqua failed to do so due to an "inadvertent error." (*See* Aqua Resp. Appx. A, ¶¶ 19, 25, 28-30 (asserting that Carolina Meadows should have been charged base facility charges for a six-inch meter during this time)). Aqua also acknowledges that, when it started billing Carolina Meadows for base facility charges in March 2020, it did so based on Carolina Meadows' six-inch *sewer* meter. (*See* Aqua Resp. Appx. A, ¶ 29). Aqua accordingly refers to its Stipulation to increase Carolina Meadows' base facility charges, first 186 and then ultimately 372 REUs, as imposing a "*recomputed* Base Facilities Charge" (*See* Aqua Resp., p. 10 (emphasis added); *see also id.* (explaining that Aqua and the Public Staff "recognized that *modifications* were necessary" for Carolina Meadows' base facility rates (emphasis added)).

Aqua's Stipulation regarding Carolina Meadows is thus not the product of general rate making, but instead represents an attempt to change the application of its sewer rates to a single customer. Such a Stipulation is inappropriate for a general rate case, which involves the establishment of general, uniform rates applicable to all customers—not the rates specific, individual customers must pay. *C.f. State ex rel. Utilities Commission v.*

Harnett County, 30 N.C. App. 24, 226 S.E.2d 215 (1976) (explaining a general rate case does not involve the determination of rights "peculiar to" an individual customer, which are more properly brought through an individual complaint (citing *Utilities Commission v. Gas Co*. 259 N.C. 558, pp. 562, 563, 131 S.E.2d 303, p. 306 (1963))). Further, attempting to determine the rates applicable to Carolina Meadows on an individual, customer-specific basis as part of a general rate case, without first providing it notice and an opportunity to be heard, constitutes a violation of its constitutional right to due process.

II. Carolina Meadows Was Not Provided Notice of Aqua and the Public Staff's Stipulation Until the Close Of Testimony.

Aqua and the Public Staff also admit in their responses that they did not notify Carolina Meadows of their Stipulation to increase its base facility charges until July 10, 2020—well after the May 19, 2020 deadline to intervene set by the Commission's scheduling order, after the Stipulation had already been entered, and only one business day before hearing testimony concluded.

According to the Public Staff, the first document disclosing Aqua's agreement to increase Carolina Meadows' base facility charges was not filed until July 7, 2020, when the Public Staff filed a revised copy of Junis Exhibit 15, which stated *in a footnote* that "Carolina Meadows Senior Care is recommended to be charged a BFC for 186 REUs per month." (*See* Public Staff Resp., p. 6, ¶ 17 (citing Revised Junis Exhibit 15)). Mr. Junis then testified at the hearing on July 9, 2020, that the Public Staff's Stipulation with Aqua included an agreement to increase Carolina Meadows' base facility charges, first to 186 REUs, then ultimately 372 REUs as part of the next general rate case. (*See* Junis Hr'g Test., Tr. Vol. 5, pp. 75-76.)

By its own admission, Aqua did not notify Carolina Meadows of this Stipulation until the next day—Friday, July 10, 2020—when Joseph Pearce, Aqua's Director of Operations, sent an e-mail to Dan Camara, Carolina Meadows' Vice President of Plant Operations, informing him of Mr. Junis' testimony regarding the Stipulation. (*See* Aqua Resp., p. 11; *see also* McLeod Affidavit, ¶ 15).[3] Live testimony from the parties' witnesses concluded one business day later on Monday, July 13, 2020.

Aqua and the Public Staff also admit that they did not start negotiating their Stipulation to increase Carolina Meadows' base facility charges until after the May 19, 2020, deadline to intervene set by the Commission's Scheduling Order had already passed. According to Aqua and the Public Staff, the parties began to negotiate a resolution to the excess capacity issues related to the Carolina Meadows WWTP as a result of Mr. Pearce's rebuttal testimony filed on June 13, 2020. (Aqua Resp. p. 10; Public Staff Resp. p. 12, ¶ 31), which triggered further "related" discussions about modifying Carolina Meadows' base facility charges.

Thus, although Aqua and the Public Staff now complain that Carolina Meadows should be held to the May 19, 2020, deadline for intervention, they concede doing so would have been impossible because the parties did not agree (or even begin to discuss whether) to increase Carolina Meadows' base facility charges until after that date, and even after agreeing, did not disclose that agreement to Carolina Meadows until July 10, 2020. Aqua and the Public Staff thus present a Catch 22, under which Carolina Meadows should have

[3] Aqua also claims that Mr. Pearce sent Mr. Camara a second e-mail on July 21, 2020, to which Mr. Camara responded that he was elevating the issue to his CEO, Mr. McLeod. (Aqua Resp., p. 11). Of course, this was well after the conclusion of live testimony from the parties' witnesses.

intervened to stop them from stipulating to increase its sewer rates *before* Aqua and the Public Staff agreed to do so and *before* Carolina Meadows was provided any notice.

Faced with the procedural problem they have created, Aqua and the Public Staff offer a series of arguments to supposedly show Carolina Meadows should have intervened sooner. Each of those arguments fails.

First, Aqua and the Public Staff argue that the February 14, 2020, Notice to Customers, which informed customers that Aqua had commenced a *general rate case*, was sufficient to notify Carolina Meadows that Aqua and the Public Staff might enter a Stipulation to specifically increase Carolina Meadows' base facility charges. (Aqua Resp., p. 14; Public Staff Resp., p. 15). To that end, both parties point to language in the notice that "[t]he Commission may consider additional or alternative rate design proposals that were not included in the original application" provided the rate structure does not produce greater overall revenues than requested. (*Id.*). Yet, Aqua and the Public Staff ignore that the February 14, 2020, notice only informed customers that Aqua had commenced a *general rate case*, not an individual case to determine the rates that apply to Carolina Meadows as an individual customer. Thus, while Carolina Meadows was notified that the parties possibly might propose alternative "*rate designs*," it was never notified that Aqua and the Public Staff would seek to increase its rates on an individual basis, specifically and by name. (*See* McLeod Affidavit ¶ 11 (stating that Carolina Meadows' relied on the notice that Aqua filed a general rate case, and thus had no reason to anticipate that Aqua or the Public Staff would seek to increase Carolina Meadows' rates on an individual basis)).

Second, Aqua argues that Carolina Meadows did not offer customer comments during the virtual public hearings on August 3, 2020, and thus "knowingly passed up an

opportunity to testify before the Commission." (Aqua Resp., p. 12). That argument, however, is a red herring. Providing customer comments at a public hearing is not a substitute for intervention and participation as a party, since doing so would not confer any rights to participate in further proceedings, access discovery, or to appeal the Commission's order if necessary.

Third, the Public Staff argue that, while Rule R1-19(b) grants the Commission discretion to allow parties to intervene after the deadline set under its scheduling orders "for good cause shown," the rule does not allow parties to intervene after hearings have concluded. (Public Staff Resp., p. 16). Carolina Meadows, however, disputes the Public Staff's interpretation. As an initial matter, the Commission's Rules do not anticipate that an applicant and the Public Staff would enter a Stipulation to increase an individual customer's rates as part of general rate case. Likewise, the rules do not anticipate such an agreement would only be disclosed at the end of the parties' hearing testimony. Thus, any procedural irregularities are of Aqua and the Public Staff's own making. Indeed, the "good cause" standard anticipates that there may be valid reasons to grant leave to intervene after the deadline set by the Commission Moreover, if the Commission agrees with the Public Staff's interpretation of Rule R1-19, the proper response would be to reopen hearings in this matter, grant the intervention, and allow Carolina Meadows to offer evidence and cross-examine the parties' witnesses—not ignore the deficiencies raised and enter an order determining Carolina Meadows' rates on an individual basis.

Finally, as noted above, any delay in the filing of Carolina Meadows' Petition is a situation of Aqua and the Public Staff's own making. In its response, Aqua "admits that it would have been preferable for Carolina Meadows to have been informed and formally

noticed of this situation when the rate case was filed, but, unfortunately, that could not have been done because both [Aqua] and the Public Staff only recognized the issue at the very end of the pre-evidentiary hearing process." (Aqua Resp., p. 14). Yet, Aqua, by its own admission, had ample opportunity to inform Carolina Meadows before the close of evidentiary hearings in this matter—it simply chose not to do so. Indeed, Aqua admits that (i) Mr. Pearce first contacted Carolina Meadows to request information regarding its facilities on May 21, 2020, (three days *after* the deadline to intervene); (ii) Aqua used the information it obtained from Carolina Meadows to support Mr. Pearce's arguments in his rebuttal testimony regarding excess capacity at the Carolina Meadows WWTP, submitted on June 13, 2020 (twenty-five days *after* the deadline to intervene); (iii) sometime thereafter, Aqua started to negotiate a Stipulation with the Public Staff that included an agreement to increase to Carolina Meadows' base facility charges; (iv) this agreement was part of the Stipulation filed on July 2, 2020 (forty-four days *after* the intervention deadline) and was reflected in footnotes to Revised Junis Exhibit 15, filed on July 7, 2020 (forty-nine days *after* the intervention deadline); and (v) Mr. Junis testified regarding Aqua's agreement to increase Carolina Meadows' base facility rate for the first time on July 9, 2020 (fifty-one days *after* the intervention deadline). (Aqua Resp., pp. 7-11).

Despite these numerous opportunities to notify Carolina Meadows, Aqua *chose* not to provide any notice until July 10, 2020—after the Stipulation was already entered and just one business day before evidentiary hearings from the parties' witnesses concluded. Having made the decision to delay, Aqua should not now be allowed to complain it is too late for Carolina Meadows to intervene.

III. The Proposed Increase to Carolina Meadows' Base Facility Charge Is Unreasonable.

As Carolina Meadows showed in its Petition and through the affidavit of its expert Bill Stannard, PE, Aqua and the Public Staff's proposal to increase Carolina Meadows' Base Facility Charge, to an amount equivalent first to 186, then to 372, REUs, is flawed and will have a substantial, detrimental, and discriminatory impact on Carolina Meadows and its residents. (*See* Stannard Affidavit, ¶¶ 19-23).

There is no dispute that Carolina Meadows is a sewer-only customer and that it maintains a single connection to Aqua's system with just one, six-inch sewer meter. Likewise, both Aqua and the Public Staff admit that, until their agreement in this case, the base facility charges applicable to Carolina Meadows were "designed" using this single, six-inch meter. (*See* Aqua Resp. p. 9-10; Public Staff Resp. p. 13). Aqua thus acknowledges and asserts that, since at least 2014, Carolina Meadows should have been, and since March 2020 has been, assessed base facility charges for a single six-inch meter, equivalent to 50 REUs. (*See* Aqua Resp. Appx. A, ¶¶ 19, 25, 28-30 (asserting that Carolina Meadows should have been charged base facility charges for a six-inch meter during this time)). Thus, under the most-recent rates approved by the Commission, Carolina Meadows pays a base facility charge of $1,305.50 per month ($15,666 annually). (*See* Aqua Resp. Appx. A, ¶ 29).

Despite taking the position that it should have charged Carolina Meadows for one six-inch sewer meter since at least 2014, Aqua now asserts that it "incorrectly" applied its Rates to Carolina Meadows and should instead be permitted to use Carolina Meadows' water meters—not its sewer meter—to "recompute" and "modify" its base facility charges going forward. (Aqua Resp., p. 10). Depending on which of the parties' proposed rate

designs the Commission adopts, this would result in Carolina Meadows' base facility charges increasing anywhere from a 279% to 548% after this rate case (based on 186 REUs), and ultimately by as much as 558% to 1,096% in future rate cases (based on 372 REUs). This is wrong for several reasons.

First, Aqua's proposal to increase Carolina Meadows' base facility charges confuses its arguments as to whether the Carolina Meadows WWTP has *excess* capacity—which is based on NC Department of Environmental Quality ("DEQ") regulations concerning *maximum* contributory design flow—with Carolina Meadows *actual use* of the system. (*See* Stannard Affidavit, ¶¶ 19-22; Stannard Suppl. Aff. ¶¶ 2-3).

In Mr. Pearce's rebuttal testimony, Aqua cited DEQ regulations as well as the number of *water* meters at Carolina Meadows, among other things, to argue that the Carolina Meadows WWTP is actually 12% *under* capacity based on *maximum* design flows. (*See* Becker/Pearce Pre-Filed Rebuttal Testimony, pp. 15-17, and Becker/Pearce Exhibit Nos. 5 and 6). In order to reach that result, Mr. Pearce argued that the contributory design flow for Carolina Meadows Senior Care, based on the number of *water* meters, should be 372 REUs—which assumes that Carolina Meadows is creating 128,665 gallons of sewage per day, using a figure of 400 gpd per REU. (*See* Becker/Pearce Exhibit 5). This is the REU figure the Public Staff and Aqua agreed to use to set Carolina Meadows' base facility charges, although they agreed to initially reduce those charges by 50% to 186 REUs avoid the full brunt of the resulting "rate shock." (Junis Hr'g Test., Tr. Vol 5, pp. 75-76).

Carolina Meadows' meter readings, however, show that its actual use is much lower than the 186 REU (and still further the 372 REU) figure used under Aqua's stipulation. According to the figures used by the public staff, Carolina Meadows actual usage over the

test year averages to 49,745 gallons of sewage per day, which is equivalent to 124 REUs. (Stannard Suppl. Affidavit, ¶ 3). ***Thus, if anything, Aqua and the Public Staff have sought to impose base facility charges on Carolina Meadows and its residents that, even when reduced by 50%, well exceed Carolina Meadows' actual usage***. Even ignoring the discriminatory treatment of Carolina Meadows, such charges run contrary to the stated goal of the parties' Stipulation—to correct an "underrepresented [ ] design flow demand." (Summ. Junis Testimony, p. 4). Rather than seek to accurately represent the "design flow demand" of Carolina Meadows, the parties have now proposed to grossly over represent it.

Second, Aqua's proposed base facility charges fail to recognize that Carolina Meadows maintains a *single sewer connection*, with a separate, six-inch *sewer* meter. In such circumstances, there is no reason to use the number of *water* meters as a proxy to set Carolina Meadows' base facility charges.[4] Instead, the basis for charging Carolina Meadows should be the size of its *sewer* meter and the volume of wastewater actually measured by that meter—which is exactly what Aqua admits should have been done under its prior-approved rates.

Third, neither Aqua nor the Public Staff cite any authority to show that Aqua's original determination assessing Carolina Meadows' base facility charges on the basis of its sewer meter was "incorrect." Although Aqua and the Public Staff assert that "all

[4] The Public Staff's response reveals that there is a factual dispute regarding the number of water meters serving the Carolina Meadows' property. In his Hearing Testimony, Mr. Junis asserted that, excluding irrigation meters, Carolina Meadows receives water through 274 meters (264 5/8-inch meters, six 2-inch meters, and four 3-inch meters). (*See* Junis H'rg Testimony, Tr. Vol. 5, p. 75). In its response, the Public Staff asserts that Carolina Meadows water bill includes charges for "279 meters of various sizes." (*See* Public Staff Resp., p. 2 ¶ 32). As set forth in Mr. McLeod's affidavit, Carolina Meadows receives a single monthly bill from Chatham County for water service, and a significant portion (at least 82 of the 5/8'' meters) are sub-meters which are maintained only for administrative purposes to apportion expenses among its residents. (McLeod Supplemental Aff. ¶¶ 4-5; *see also* Aqua Resp., p. 11, n. 10 (stating the official transcript of Junis' testimony concerning the number of meters at Carolina Meadows "contains errors."))

customers" are billed based on their water meters, they do not cite anything to support that assertion. More importantly, they fail to point to anything in Aqua's Commission-approved rates that states it will use water meters to set base facility charges for sewer-only customers, even where those customers maintain their own sewer meters.

Fourth, assessing base facility charges using Carolina Meadows' water meters ignores that Carolina Meadows owns and is responsible for the entirety of the sewer collection system up to its point of connection. Although the Public Staff argue that Carolina Meadows does not maintain any portion of the sewer collection system for its facilities because it sold the WWTP and two lift stations to Aqua in 2005 (Public Staff Resp., p. 10), the fact remains that Carolina Meadows retained ownership over a significant portion of this collection system. This includes the sewer connections to each of the units in its facility as well as 3.3 miles of gravity, and 0.78 miles of force main. (McLeod Affidavit ¶ 8). Moreover, because Carolina Meadows only maintains a single-meter account, Aqua does not incur many of the expenses that a base facility charge is meant to cover—such as (i) costs to read meters for each living unit, (ii) costs to issue and collect bills for each unit within the complex, or (iii) costs to handle customer service calls from individual residents. (Stannard Affidavit, ¶ 20-21).

Finally, even if it were proper to use Carolina Meadows' water meters to assess base facility charges for sewer service (which it is not), Aqua and the Public Staff have done so incorrectly. As Carolina Meadows asserted in its opening affidavit, Chatham County bills it for water service under a single master account. (McLeod Affidavit ¶ 5). Moreover, at least 82 of the 5/8-inch water meters Carolina are sub-meters that sit behind a master meter. (McLeod Suppl. Affidavit, ¶4). Treating these as separate meters is

inappropriate, given that they are only maintained for the administrative purpose of apportioning water bills among units at the facility and do not actually represent separate water connections.

All told, Aqua's Stipulation seeks to work a substantial, dramatic, and discriminatory increase on Carolina Meadows and its residents. Although Carolina Meadows recognizes that Aqua and the Public Staff advocate different rate designs, their Stipulation regarding Carolina Meadows will significantly increase its sewer charges no matter which parties' rate design is adopted, and even if the Commission accepts their proposal to initially reduce Carolina Meadows' base facility charges by 50%. (*See* Public Staff Resp., pp. 8-9 (showing that, even when the base facility charge is reduced by 50%, Carolina Meadows' overall annual sewer bill will increase anywhere from 19 to 32%)); *see also* Stannard Affidavit, ¶23 (calculating 78% increase when Aqua's rate is fully implemented at the level of 372 REUs)). This would impose a substantial hardship on Carolina Meadows and its residents.

IV. Aqua and the Public Staff's Various Other Arguments to Oppose Intervention or Justify Individually Increasing Carolina Meadows' Rate Fail.

In addition to their primary arguments as to whether Carolina Meadows should be allowed to intervene, Aqua and the Public staff offer a series of arguments that are either incorrect or irrelevant to the issue at hand.

First, Aqua and the Public Staff suggest that their Stipulation to substantially increase Carolina Meadows' base facility charges is justified because Aqua "mistakenly" failed to bill Carolina Meadows for base facility charges from May 2014 until March 2020. (*See, e.g.,* Public Staff Resp., p. 16, ¶ 38 ("Carolina Meadows' contentions regarding the rate impact . . . omit key facts, including the fact that Carolina Meadows has been

contractually materially underbilled for eight years and mistakenly under billed since the expiration of those negotiated rates."). But whether Aqua did, or did not, mistakenly "underbill" Carolina Meadows in the past has no bearing on the rates that should be imposed going forward, which are supposed to be the result of general, uniform ratemaking based on cost-of-service principles. The Public Staff's suggestion to the contrary is simply an invitation to engage in individual, arbitrary ratemaking for an individual customer.[5] Further, Carolina Meadows does not object to the assessment of base facility charges for the single six-inch sewer meter it maintains—which would be consistent with Aqua's existing rates and practices, as well as the rates the Commission has approved in prior cases. Instead, it only objects to Aqua and the Public Staff's attempt to impose a unilateral rate increase on Carolina Meadows by "recomputing" or "modifying" its rates on an individual basis.

Second, both Aqua and the Public Staff insist that their agreement to increase Carolina Meadows' base facility charges has nothing to do with their agreement to withdraw the excess capacity charges for the Carolina Meadows WWTP. That, however, is not the case. Mr. Junis testified at hearing that the Public Staff agreed to withdraw the staff's proposed excess capacity adjustment "as part of the give-and-take of compromise in settlement negotiations." (*See* Junis H'rg Test., Tr. Vol. 5, p. 70; *see also* Junis H'rg Test., Tr. Vol. 4, p. 341 ("This is a byproduct of give-and-take within a settlement."). He further testified that the Public Staff agreed to increase Carolina Meadows' base facility

[5] The Public Staff also asserts, incorrectly, that Aqua's mistaken failure to bill Carolina Meadows' for base facility charges between May 2014 and March 2020 imposed a greater burden on Aqua's other customers who have been forced to "pick up the difference." (Public Staff Resp., p. 17). This, however is not so, and the Public Staff does not cite any evidence to support this argument, which ultimately amounts to pure makeweight. As Aqua acknowledges, its failure to bill Carolina Meadows base facility charges did not affect the rates charged other customers, but instead reduced Aqua's profit. (*See* Aqua Resp., p. 13).

charges as a result of Aqua's rebuttal testimony, which he claimed revealed that the assessment of charges using a single, six-inch meter "significantly underrepresented the design flow demand of the customer." (Junis H'rg Test., Tr. Vol. 5, p. 70). Mr. Junis himself thus tied the increase in Carolina Meadows' base facility charges to the Public Staff's agreement to withdraw excess capacity charges for the WWTP.

Aqua, for its part, ties the two agreements together even more directly. In its response, Aqua asserts that voiding its agreement to increase Carolina Meadows' base facility charge would risk undoing its entire settlement with the Public Staff, because Section VI of the Stipulation provides that it "is the product of negotiation and compromise of a complex set of issues" and that "if the Commission rejects any part of the Stipulation" the Stipulating Parties must meet to determine whether they are still willing to accept the Stipulation's remaining terms. (Aqua Resp., p. 16). Put simply, Aqua all but admits that the agreement to withdraw the excess capacity and agreement to increase Carolina Meadows' base facility charge were conditioned on one another.

Third, Aqua and the Public Staff dispute Carolina Meadows' testimony that Aqua paid only $95,000 in monetary consideration when it purchased the WWTP. Both parties argue instead that Aqua also agreed to pay an additional sum of $258,578, citing the Commissions' December 9, 2005, Transfer Order in Docket Nos. W-218, Sub 216 and W-118, Sub 3. However, the Asset Purchase Agreement for the Acquisition of Wastewater System Assets, between Carolina Meadows and Aqua North Carolina, dated June 2, 2005—which is the only record Carolina Meadows has of the amount paid—provides only for $95,000 in compensation for all Wastewater System Assets. (*See* McLeod Suppl. Affidavit, ¶ 3, Exhibit F). Which figure is correct, however, has no bearing on whether

Carolina Meadows should be allowed to intervene in this matter, or for that matter, whether Aqua and the Public Staff should be allowed to agree to increase Carolina Meadows' base facility charges on an individual basis. The fact also remains that, under either figure, Carolina Meadows sold the plant to Aqua for a sum that was significantly less than what it cost to construct.

Finally, in a last-ditch effort to avoid any effort to scrutinize its Stipulation with Aqua, the Public Staff engages in brinksmanship, requesting that, if the Commission allows Carolina Meadows to intervene and rules the Stipulation invalid, that it implement the full rate increase the Public Staff negotiated with Aqua and set Carolina Meadows' base facility charges at 372 (rather than 186) REUs. (Public Staff Resp., p. 18). That request, however, is just as inappropriate (for all the reasons already argued) as Aqua's proposed stipulation to "recompute" Carolina Meadows' base facility charges in the first place. Doing so would require the Commission to adjudicate, in a general ratemaking case, the individual rate to be applied to Carolina Meadows. Further, given the Public Staff's concerns that imposing even a fifty-percent increase would cause Carolina Meadows' residents a substantial "rate shock," the suggestion that the Commission impose the full amount of that increase just because Carolina Meadows has sought to intervene in this case would constitute an inappropriate, and arbitrary, penalty.

CONCLUSION

For the reasons set forth above, as well as those in its Petition to Intervene, Carolina Meadows asks that the Commission allow it to intervene in this proceeding and enter an order declaring the proposed Stipulation to increase Carolina Meadows' base facility

charges void, or, in the alternative, treat this Petition as a customer complaint and open a docket to allow proceedings thereon.

This the 9th day of September, 2020.

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* Admission *pro hac vice* to be sought.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Petition for Intervention and Complaint was served on all parties of record in the above-referenced proceeding on September 10, 2020, via the Commission's electronic filing system, as well as via U.S. Mail on September 11, 2020, as follows:

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