

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)

MOTION OF THE PUBLIC
STAFF TO COMPEL

NOW COMES THE PUBLIC STAFF – North Carolina Utilities Commission (Public Staff), by and through its Executive Director, Christopher J. Ayers, and moves the North Carolina Utilities Commission (Commission) to compel Aqua North Carolina, Inc. (Aqua or Company), to fully and promptly respond to Public Staff Data Requests 54 and 82. In support of this motion, the Public Staff respectfully shows the Commission the following:

1. On December 31, 2019, Aqua filed an application with the North Carolina Utilities Commission (Commission) requesting authority to adjust and increase its rates for water and sewer utility services in all its service areas in North Carolina effective January 30, 2020.

2. On March 17, 2020, the Public Staff sent Aqua its Data Request No. 54, titled “Thill Direct Testimony and Exhibit 5” (PS DR 54). See Attachment A. PS DR 54 requests a response by March 27, 2020, the deadline for responses specified in the Commission’s Order Scheduling Hearings, Establishing Discovery

Guidelines, and Requiring Customer Notice (Scheduling Order) issued in this docket on February 14, 2020.

3. The Public Staff requires the information requested in PS DR 54 for its audit of 1) the Company's request to defer carrying costs and depreciation related to capital projects worth \$14.8 million from the in-service date until they are included in rates; 2) the projects to be included in the Company's WSIC/SSIC application; and 3) the Public Staff's analysis of accrued depreciation and rate base, which in turn impacts revenue requirements and rate design.

4. On March 27, 2020, Aqua witness Ed Thill sent an email to the Public Staff stating, "Public Staff Data Request #54 seeks significant information related to post-test year additions which are not yet complete. Aqua will respond to this request when that information is more fully available, currently estimated to be around April 17." Witness Thill had previously informed members of the Public Staff's Accounting Division by email dated March 23, 2020, that he preferred to postpone PS DR 54 until April 30, 2020, when the Company's WSIC/SSIC application would be complete.

5. On March 27, 2020, the Public Staff Aqua requested that the Company provide a partial response to PS DR 54 before April 17, 2020.

6. On April 1, 2020, counsel for Aqua and Aqua personnel participated in a call with Public Staff counsel and personnel regarding the timing of Aqua's response to PS DR 54, which was by that time four days overdue. No resolution was reached.

7. Following the April 1, 2020 call, the Public Staff continued to correspond with Aqua in an attempt to obtain responses to PS DR 54. The Public Staff continued to work with Aqua in a cooperative manner during this time because Aqua provided partial responses to PS DR 54 and had not filed an objection to the data request or otherwise refused to provide any of the information requested.

8. On April 7, 2020, Aqua witness Thill responded to a timeline for providing outstanding responses to PS DR 54 and, among other things, agreed to provide all outstanding responses not previously provided by April 17, 2020.

9. On April 9, 2020, the Public Staff sent to Aqua its Data Request No. 82 titled “Deferral Capital Expenditures” (PS DR 82). See Attachment B. The Company has admitted in response to Public Staff Data Request No. 84 that, on an individual basis, none of the costs included in its request for deferred accounting treatment are “unusual” or “extraordinary” or would have a “material” impact on the Company’s financial position as those terms have been used by the Commission in determining whether to grant a utility’s request for deferred accounting treatment. Despite this admission, the Public Staff requires the information requested in PS DR 82 in order to analyze the Company’s request for deferred accounting treatment of costs from 487 projects when considered collectively, as well as to audit the Company’s proposed additions to rate base.

10. Also on April 9, 2020, Aqua requested the Public Staff’s “re-evaluation of its outstanding [data] requests based on updated circumstances”

In the same correspondence, Aqua asserted PS DR 54, Items 2 and 3, and PS DR 82 “seem[] redundant and excessive in light of the Company’s concession [that the costs for which it requests deferred accounting treatment do not meet the tests historically applied by the Commission on an individual basis].”

11. On April 11, 2020, the Public Staff responded to Aqua’s April 9, 2020 correspondence and explained why responses to PS DR 54, Item 2, and PS DR 82 were still needed for its investigation, despite the Company’s admission regarding its request for deferred accounting treatment. The Public Staff stated that it was willing to withdraw PS DR 54, Item 3, if the Company agreed to provide a complete and timely response to PS DR 82.

12. On April 14, 2020, Aqua responded to the Public Staff’s email of April 11, 2020, and stated regarding PS DR 54, Item 2:

- Aqua cannot answer these questions at this point.
 - The Company has made no WSIC/SSIC request yet for the time period for which DR 54, Q2 applies. A preliminary estimate was offered only in recognition that, should deferral accounting be granted, that deferral should be reduced by any proceeds of WSIC/SSIC collected on those same assets (to prevent double recovery). The rate case process should not require an expediting of the normal WSIC/SSIC review process, especially in advance of an actual filing.

The Company also thanked the Public Staff for its agreement to withdraw PS DR 54, Item 3, but indicated that it would not provide a complete response to PS DR 82, one of the conditions set by the Public Staff in its April 11, 2020

correspondence for its agreement to withdraw PS DR 54, Item 3. Specifically, Aqua stated as follows regarding PS DR 82:

[The response] will not [] include all of the detailed information [the Public] Staff requested. The Company's response will be limited to the base-level of information extracted from its asset ledger without manual enhancement by Company personnel. The file will include the date recorded, but not date of completion or date placed in service. The [Public] Staff's separate requests for Activity Description and System Name will be limited to the standard identifying information contained in each asset's base description, which is typically a combination of those two items.

13. Shortly after it received the correspondence described directly above, the Public Staff received two Excel spreadsheets from the Company containing information requested by PS DR 54, Item 2, which Aqua previously indicated it was unable to respond to because it had not yet made a WSIC/SSIC request for the time period to which DR 54, Q2 applies.

14. As of the time of filing of this motion, Aqua has failed to provide complete responses to the following items requested in PS DR 54:

2. Please provide the following information by rate division for each WSIC/SSIC eligible project summarized on Thill Direct Exhibit 5, Table 1:

h. Copies of any other documentation, such as budget authorizations, analysis, requests, etc., related to each project.

3. Please provide the following information by rate division for each Non-WSIC/SSIC eligible project summarized on Thill Direct Exhibit 5, Table 1:

d. The date each project was complete and in service.

- e. For projects with a cost less than \$10,000 booked from October 2019 through February 2020 and for all projects booked in March 2020, regardless of cost, a detailed transaction listing supporting the final cost of each project.
- g. Copies of all work orders and other documentation explaining the need and purpose for each project, including any correspondence with DEQ.
- h. Copies of any other documentation, such as budget authorizations, analysis, requests, etc., related to each project.
- i. The Plan and Specification Approval, Authorization to Construct, Engineer's Certification, Applicant Certification, and Final Approval.

As stated above, responses to these items were originally due on March 27, 2020, pursuant to the discovery guidelines contained in the Commission's Scheduling Order.

15. In addition, Aqua has failed to provide complete responses to the following items requested in DR 82:

1. For each rate entity (i.e., ANC W, ANC WW, Brookwood, Fairways W, and Fairways WW) and each month during the calendar years of 2015, 2016, 2017, 2018, 2019, 2020 (actual through March 2020 and estimated through the end of the year), and 2021 (budgeted), please provide a list of all capital projects, by category (i.e., WSIC/SSIC eligible projects, Non-WSIC/SSIC projects, Routine replacements), including the following:

- c. Date of completion.
- d. Date placed in service.

Responses to these items were originally due on April 20, 2020, pursuant to the discovery guidelines contained in the Commission's Scheduling Order. As stated above, the Public Staff agreed to withdraw PS DR 54, Item 3, if the Company agreed to provide a complete and timely response to PS DR 82. While Aqua has failed to provide a timely response to PS DR 82, the Public Staff will nonetheless forego a response to PS DR 54, Item 3, if it receives a complete response to PS DR 82.

16. The Public Staff needs the outstanding responses to PS DRs 54 and 82 to investigate a variety of issues including, but not limited to, whether project costs were reasonable and prudent and should be included in rate base, which in turn impacts revenue requirements and rate design, the Company's request for deferred accounting treatment of costs from 487 projects on a combined basis, and the Company's WSIC/SSIC application, for which the Public Staff has a significantly shortened review period due to the timing of the rate case, which the Company determined through the filing of its application.

17. The Company has been granted a monopoly franchise to provide water and wastewater service in its service areas. It now seeks a substantial rate increase, deferred accounting treatment for costs associated with 487 projects, as well as recovery of expenditures through the WSIC/SSIC mechanisms. An essential part of the regulatory compact is that utilities, in exchange for their monopoly franchise, be accountable to regulators.

18. The Public Staff's discovery requests are authorized by and necessary under the investigative duties prescribed by N.C. Gen. Stat. § 62-15. The Public Staff cannot fulfill its statutory duty to review and investigate the reasonableness of rates proposed to be charged by the Company or other requests made in the Company's application, and to make appropriate recommendations to the Commission with respect to those rates and requests, when the Company does not provide the Public Staff with the information and records necessary to conduct its investigation.

19. The Commission's investigative powers in N.C.G.S. §§ 62-30 to 62-36 are far more extensive than a civil litigant would have in Superior Court. For example, under N.C.G.S. § 62-36 the Commission may compel a utility to provide special reports. This additional burden on a utility is part and parcel of the regulatory compact. The Commission's investigative powers may be extended to the Public Staff in the exercise of its duties under N.C.G.S. § 62-15.

20. Aqua made the decision to request deferred accounting treatment for costs related to 487 projects, based on a novel proposition that costs should be considered collectively, and knew or should have known that this would necessitate an extensive investigation by the Public Staff, including extensive discovery. In fact, Aqua witness Thill commits to making this information available to the Public Staff on page 33, lines 4 and 5, of his direct testimony when he states that the projects proposed for deferred accounting treatment "will be fully available for review and validation by the Public Staff prior to inclusion in rates."

Unfortunately, Aqua has not met its commitment with the result that the Public Staff's investigation has been significantly impaired and delayed.

21. For example, Aqua should have been prepared to timely provide plant in service information, including the dates each project was completed and placed in service, which is needed to determine when depreciation begins and the rate base net plant in service – routine determinations that are made in every general rate case whether or not a request for deferred accounting treatment is made. Moreover, there are several reasons that make it especially important Aqua complies with requests for discovery regarding plant in service in this case. First, due to the COVID-19 pandemic and related restrictions on travel and gatherings, the Public Staff will likely be unable to conduct site visits to the Company's larger and more complex projects as it typically does, and will instead have to rely on information provided in response to its data requests to confirm that those projects are complete and in service. Second, the Public Staff has observed what appears to be a pattern of Aqua closing out projects on its books a significant period of time after the projects are completed and in service. In the present rate case, for example, Aqua's update for projects closed in March 2020 included 51 WSIC/SSIC eligible projects totaling \$5.2 million, whereas just 17 WISC/SSIC eligible projects totaling \$2.1 million closed between October 2019 and February 2020, a period of five months. The result of this practice is that the beginning of depreciation is omitted, thereby reducing or eliminating accrued depreciation and inflating rate base. Without the information it has requested related to project completion and in service dates, the Public Staff is unable to investigate this issue. The Public Staff

is not aware of a legitimate reason why Aqua should not provide this necessary information.

22. To the extent Aqua contends it should not be required to provide the Public Staff with information related to its WSIC/SSIC request, the Public Staff notes that Aqua decided when to file its rate case and knew or should have known that the timing of its rate case filing and the timing of its WSIC/SSIC application would overlap, resulting in a significantly shortened period for the Public Staff to review its WSIC/SSIC request. On page 80 of its Order Granting Partial Rate Increase, Approving Rate Adjustment Mechanism, and Requiring Customer Notice issued on May 2, 2014, in Docket No. W-218, Sub 363, the Commission made the following conclusion in support of its decision to allow Aqua to utilize the WISC/SSIC mechanism:

The requirements of G.S. 62-15(d) for the Public Staff to review, investigate, and make appropriate recommendations to the Commission with respect to the reasonableness of rates charged or proposed to be charged by any public utility is not limited to general rate case proceedings; rather, such oversight and protection for the customers would also apply to Aqua's requests to initiate the WSIC/SSIC mechanism. Witness Fernald testified that due to the detailed examination which would occur with respect to the specific plant additions reviewed between rate case proceedings in regard to the WSIC/SSIC mechanism, those same plant additions would likely not require as much review in a general rate case proceeding, but would nonetheless be subject to further review. Consequently, the Commission determines that the Public Staff, in its role as the consumer advocate, will carefully review and scrutinize each project proposed for recovery through the WSIC/SSIC mechanism for eligibility and reasonableness before providing its recommendation to the Commission.

The Public Staff typically has at least 45 days to investigate WSIC/SSIC requests and draft its initial recommendation in connection with the WSIC/SSIC request itself, and a second opportunity to review the same plant additions in the next general rate case proceeding. This is how this process functioned in the W-218, Sub 497, rate case and how it will function for the eligible projects currently being recovered in an accelerated manner via the WSIC/SSIC rate adjustments approved by the Commission and effective July 1, 2019, and January 1, 2020. For this post-test year period however, due to the overlap of the investigation in the present rate case and the schedule for the filing of the Company's WSIC/SSIC request, the Public Staff will be reduced to a single 19-day period to perform its investigation and draft its recommendation if it does not receive the information related to the Company's WSIC/SSIC request until May 1, 2020, the date the Company indicated it will file its request. That is to say, on May 19, 2020, the Public Staff is required to file its testimony regarding its investigation of all utility plant in service in the rate case, including WSIC/SSIC eligible projects – which the Public Staff typically reviews for the second time in the rate case – prior to making its WSIC/SSIC recommendation for the same plant additions. The Public Staff contends that this abbreviated period does not afford the Public Staff the opportunity to “carefully review and scrutinize each project proposed for recovery through the WSIC/SSIC mechanism” that the Commission envisioned when it permitted Aqua to utilize the WSIC/SSIC mechanism.

23. The Public Staff has made a lengthy, good faith effort to work with Aqua in a cooperative manner to obtain compliance with its reasonable and

necessary data requests. However, Aqua continues to refuse to provide the information the Public Staff needs to fulfill its statutorily prescribed investigative duties, including to perform a meaningful review of Aqua's WISC/SSIC application and its significant request for deferred accounting treatment based on a novel argument. As stated above, based on the discovery guidelines established in the Commission's Scheduling Order, Aqua's response to PS DR 54 was due March 27, 2020, and the outstanding responses are now 25 days overdue. Aqua's response to PS DR 82 was due April 20, 2020, based on the Commission's discovery guidelines. Within this context, it is reasonable and appropriate for the Commission to compel Aqua to respond fully to the Public Staff's discovery requests. Accordingly, the Public Staff requests that the Commission order Aqua to fully and promptly respond to the Public Staff's Data Request Nos. 54 and 82. As stated above, the Public Staff will forego a response to PS DR 54, Item 3, if it receives a complete response to PS DR 82.

WHEREFORE, the Public Staff moves:

1. That the Commission direct Aqua to fully and promptly respond to the Public Staff's Data Request Nos. 54 and 82 within a deadline the Commission deems reasonable.
2. For such other and further relief as the Commission may deem just and proper.

This the 22nd day of April, 2020.

PUBLIC STAFF
Christopher J. Ayers
Executive Director

David T. Drooz
Chief Counsel

Electronically submitted
/s/ Megan Jost
Staff Attorney

Electronically submitted
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CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing Motion on all parties of record in accordance with Commission Rule R1-39, by United States mail, postage prepaid, first class; by hand delivery; or by means of facsimile or electronic delivery upon agreement of the receiving party.

This the 22nd day of April, 2020.

Electronically submitted
/s/ Megan Jost

**Aqua North Carolina, Inc.
Docket No. W-218, Sub 526
Public Staff Data Request No. 54
Date Sent: March 17, 2020
Date Requested: March 27, 2020**

Public Staff Technical Contacts:

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Subject of Data Request: Thill Direct Testimony and Exhibit 5

Please refer to Public Staff Data Request 1 for instructions for responding to this and all other Data Requests served on the Company by the Public Staff in the above-captioned proceeding.

Please provide all responses to this request in searchable native electronic format (e.g., Excel, Word, or PDF files). If in Excel format, please include all working formulas. In addition, please include (1) the name and title of the individual who has the responsibility for the subject matter addressed therein, and (2) the identity of the person making the response by name, occupation, and job title.

1. Please provide a copy of Thill Direct Exhibit 5 in excel with all working formulas intact.
2. Please provide the following information by rate division for each WSIC/SSIC eligible project summarized on Thill Direct Exhibit 5, Table 1:
 - a. A detailed list of all projects.
 - b. A detailed description of each project.
 - c. The name of the subdivision and system associated with each project.
 - d. The date each project was complete and in service, the date the project was closed to plant, and the amount closed to plant by plant account.
 - e. A detailed transaction listing supporting the final cost of each project.
 - f. For each project that has not been completed, please provide the estimated completion date.

- g. Copies of all work orders and other documentation explaining the need and purpose for each project, including any correspondence with DEQ.
 - h. Copies of any other documentation, such as budget authorizations, analysis, requests, etc., related to each project.
 - i. The Plan and Specification Approval, Authorization to Construct, Engineer's Certification, Applicant Certification, and Final Approval.
3. Please provide the following information by rate division for each Non-WSIC/SSIC eligible project summarized on Thill Direct Exhibit 5, Table 1:
- a. A detailed list of all projects.
 - b. A detailed description of each project.
 - c. The name of the subdivision and system associated with each project.
 - d. The date each project was complete and in service, the date the project was closed to plant, and the amount closed to plant by plant account.
 - e. A detailed transaction listing supporting the final cost of each project.
 - f. For each project that has not been completed, please provide the estimated completion date.
 - g. Copies of all work orders and other documentation explaining the need and purpose for each project, including any correspondence with DEQ.
 - h. Copies of any other documentation, such as budget authorizations, analysis, requests, etc., related to each project.
 - i. The Plan and Specification Approval, Authorization to Construct, Engineer's Certification, Applicant Certification, and Final Approval.
4. For each project that Aqua is requesting deferral accounting treatment, please provide a detailed explanation as to how each project meets each of the following requirements for deferral accounting treatment as set out by the Commission:
- a. The costs in question are of an unusual and/or extraordinary nature.
 - b. Absent deferral, would have a material impact on the Company's financial condition in terms of:
 - 1) ROE realized and reported to the Commission.
 - 2) The Company's currently authorized ROE.
 - 3) Current economic conditions; the Company's need for new investment capital; and the impact that the Commission's decision will have on the future availability and cost of such capital.
5. Please provide a detailed explanation for the summary adjustment on the projected WSIC/SSIC earnings on post-test year additions that is calculated on Thill Direct Exhibit 5, Table 2.
6. Please provide copies of all work papers and assumptions used in calculating accumulated depreciation and depreciation expense by rate division for all projects

reflected on Table 3 of Thill Direct Exhibit 5. The calculation should include the project cost, general ledger plant account, and service life and depreciation rates.

7. Please provide a detailed explanation as to why Aqua did not include an adjustment for the impact of accumulated deferred income taxes on rate base in determining the net deferral calculated on Table 3 of Thill Direct Exhibit 5.

8. Please provide the calculation of accumulated deferred income taxes by rate division for all projects reflected on Table 1 of Thill Direct Exhibit 5.

9. For each project reflected on Table 1 of Thill Direct Exhibit 5, please provide any annual reduction in operating and maintenance costs by rate division as a result of adding these projects to rate base.

**Aqua North Carolina, Inc.
Docket No. W-218, Sub 526
Public Staff Data Request No. 82
Date Sent: April 9, 2020
Date Requested: April 19, 2020**

Public Staff Technical Contact:

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Subject of Data Request: Deferral Capital Expenditures

Please refer to Public Staff Data Request 1 for instructions for responding to this and all other Data Requests served on the Company by the Public Staff in the above-captioned proceeding.

Please provide all responses to this request in searchable native electronic format (e.g., Excel, Word, or PDF files). If in Excel format, please include all working formulas. In addition, please include (1) the name and title of the individual who has the responsibility for the subject matter addressed therein, and (2) the identity of the person making the response by name, occupation, and job title.

1. For each rate entity (i.e., ANC W, ANC WW, Brookwood, Fairways W, and Fairways WW) and each month during the calendar years of 2015, 2016, 2017, 2018, 2019, 2020 (actual through March 2020 and estimated through the end of the year), and 2021 (budgeted), please provide a list of all capital projects, by category (i.e., WSIC/SSIC eligible projects, Non-WSIC/SSIC projects, Routine replacements), including the following:
 - a. Total cost of the project;
 - b. Primary plant account (e.g., 320300 – Water Treatment Equipment or 354000 – Structures & Improvements)
 - c. Date of completion;
 - d. Date placed in service;
 - e. Date recorded/booked for accounting;
 - f. Activity description (e.g., main/service replacement, Fe/Mn filter, generator, hydro tank replacement, etc.); and
 - g. System name.