

**SANFORD LAW OFFICE, PLLC**  
Jo Anne Sanford, Attorney at Law

January 12, 2022

Ms. A. Shonta Dunston, Chief Clerk  
North Carolina Utilities Commission  
4325 Mail Service Center  
Raleigh, North Carolina 27699-4325

**Via Electronic Filing**

Re: Aqua North Carolina, Inc.  
Docket No. W-218, Sub 526A  
Application for Approval of Water and Sewer System Improvement  
Charge Rate Adjustments Pursuant to G.S. 62-133.12

Dear Ms. Dunston:

Attached please find for filing a copy of Aqua's Verified Response to Notice of Public Staff's Plan to Present Comments and Recommendations at the Commission's regular staff conference, to be held on Tuesday, January 18, 2022.

I hereby certify that I have served the parties of record.

As always, thank you and your staff for your assistance and please let us know if there are questions or suggestions.

Sincerely,

**Electronically Submitted**  
**/s/Jo Anne Sanford**  
State Bar No. 6831  
Attorney for Aqua North Carolina, Inc.

c: Parties of Record

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., ) VERIFIED RESPONSE TO  
202 MacKenan Court, Cary, North ) NOTICE OF PUBLIC  
Carolina 27511, for Authority to ) STAFF'S PLAN TO PRESENT  
Implement Water and Sewer System ) COMMENTS AND  
Improvement Surcharge Rate ) RECOMMENDATIONS AT  
Adjustments Pursuant to G.S. 62-133.12 ) THE COMMISSION'S  
) REGULAR STAFF  
) CONFERENCE

**NOW COMES Aqua North Carolina, Inc.** (Aqua or Company), represented by the undersigned counsel, to file this Verified Response<sup>1</sup> to the Notice of Public Staff's Plan to Present Comments and Recommendations at the Commission's January 10, 2022 Regular Staff Conference<sup>2</sup> (Notice and Recommendations) filed in this docket on December 22, 2021. The Public Staff's Notice and Recommendations address the WSIC/SSIC<sup>3</sup> Surcharge Application filed by Aqua in this docket on November 1, 2021.

The Public Staff initially recommended the following four adjustments to Aqua's proposed WSIC and SSIC revenue requirements:

1. Correction to Accumulated Deferred Income Tax (ADIT)

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<sup>1</sup> The information contained in this Response has been verified by Aqua North Carolina Controller Josh Howery.

<sup>2</sup> This matter will now be considered by the Commission at its Regular Staff Conference scheduled for Tuesday, January 18, 2022.

<sup>3</sup> WSIC is the acronym for Water System Improvement Charge and SSIC is the acronym for Sewer System Improvement Charge, a surcharge adjustment mechanism authorized by G.S. 62-133.12 and Commission Rules R7-39 and R10-26.

2. Updates to Allowance for Funds Used During Construction (AFUDC) Interest Rates
3. Reclassification of Monthly Project Charges
4. Imputation of 2% Invoice Discount for Well Meter Purchasing

Aqua does not oppose or contest Public Staff adjustments 1 and 3, but does object to adjustments 2 and 4. The Public Staff has decided not to pursue adjustment 2 in this case, dealing with AFUDC; thus, the Company will not address that issue herein on the merits.

In addition, during the course of discovery in this case, the Public Staff recently advised the Company that the Staff would propose an additional adjustment to Aqua's WSIC revenue requirement based upon a challenge to the WSIC eligibility of proposed Funding Project FP35801022853 – WSIC Cold Springs Water Main Extension. Aqua does not oppose the Public Staff's proposed adjustment for this project and, for that reason, made a filing on January 7, 2022, to delete this project from consideration for WSIC surcharge cost recovery.

Recognizing that Aqua has the burden of proof in these matters, a discussion of the one remaining contested adjustment to revenue requirement, as well as the Public Staff's comments concerning Aqua's Meter Exchange Project (which does not impact revenue requirement in this proceeding), follows:

**A. Public Staff's Position Regarding Imputation of 2% Invoice Discount for Well Metering Purchasing**

In its Notice and Recommendations, the Public Staff asserted that, upon reviewing invoices of project charges, Aqua was not paying invoices in a timely manner to receive a 2% discount on well meter costs from the supplier for project

FP35800018686 WSIC Well Meter Replace – Central. The Public Staff submits that customers should not pay for the non-discounted cost of this project due to Aqua’s failure to make payments in time to capture the discount. The Public Staff imputed the 2% discount on the well meter costs, resulting in a reduction of \$5,146.

**Public Staff’s Response to Data Request from Aqua Regarding Imputation of 2% Invoice Discount for Well Metering Purchasing**

On January 6, 2022, Aqua served a Data Request on the Public Staff (Aqua DR 1, Item 3), which, in pertinent part, requested the following information:

Regarding the Public Staff's proposed imputation of 2% invoice discount for well meter purchasing, please state whether this is a new adjustment being proposed by the Staff applicable only to Aqua; whether this adjustment has previously been proposed by the Staff for application to any other public utility in North Carolina; if this adjustment has not previously been applied to other public utilities, does the Staff intend to make this recommendation to the Commission on a generic basis applicable to all regulated utilities; and whether such an adjustment has ever been considered and approved/disapproved by the Commission.

On January 10, 2022, the Public Staff provided the following response to Aqua DR 1, Item 3:

PS Response: The Public Staff’s recommendation to impute the 2% discount on water meter costs is not a new adjustment applicable “only” to Aqua. Pursuant to N.C. Gen. Stat. § 62-133.12, the Commission may approve a rate adjustment mechanism in a general rate proceeding pursuant to G.S. 62-133 to allow a water or sewer public utility to recover through a system improvement charge the incremental depreciation expense and capital costs associated with the utility's *reasonable and prudently incurred* investment in eligible water and sewer system improvements.” (Emphasis added [in original]). The Public Staff does not believe the additional \$5,146 Aqua paid because it did not remit payment within 15 days constitutes a reasonable and prudently incurred investment. Given that Aqua has repeatedly purchased well meters from Sensus, Aqua should have been aware of the discount and made a reasonable effort to remit payments within 15 days to save itself and customers money. Functionally, in this situation payment made 15 days after

the invoice date is subject to a 2% late fee. I would make this recommendation for any utility seeking cost recovery. At this time, I do not recall whether this exact adjustment has been made before. It is my understanding that similar adjustments to remove late fees and penalties on accounts payable are not uncommon and have been made before by the Public Staff to costs sought for recovery by Aqua and other regulated utilities.

### **Aqua's Response Regarding Imputation of 2% Invoice Discount for Well Meter Purchasing**

Aqua agrees that the Company's well meter vendor offers a 2% discount on materials if payment is "received 15 days from invoice date"; otherwise, payment is due 30 days from the invoice date. Net 30 is an industry standard payment term. The Public Staff initially stated that Aqua is not paying these invoices "in a timely manner" to receive this discount. Aqua disagrees with this negative characterization and the Staff's inference that the Company is not timely in payment of such invoices. "Net 15" is not a common payment term.

Aqua also takes issue with the Public Staff's apparent expectation that the Company can easily modify its invoice payment processes which are applicable to thousands of invoices paid every month to accommodate this specific vendor discount.

Furthermore, the Staff's supplemental assertion that, in effect, payment made more than 15 days after the invoice date renders Aqua subject to a 2% late fee is unpersuasive and is at odds with ordinary business practices. The failure or inability to take advantage of a 2% early-payment discount cannot reasonably be characterized as incurring a "late fee." A discount is an incentive for the customer to render significantly earlier payment than is otherwise required. Failure to meet an early-payment term by Aqua does not render 2% of the Company's payment to

be either an unreasonable and/or imprudent investment which justifies a ratemaking penalty.

Aqua also is concerned that the Public Staff's recommendation unjustly penalizes the Company by removing 2% of the **actual cost** of these well meters, paid in good faith to the benefit of Aqua's utility operations and its customers. This is not a fine or fee levied by the vendor which resulted from untimely payment of a bill, but a discount that Aqua was unable to take advantage of since the Company did not expedite its normal payment processes in order to meet the discount requirements.

Similar to the Public Staff's initial adjustment, now withdrawn, for updates to AFUDC interest rates, it is Aqua's view that an adjustment to impute an invoice discount which is in the nature of a penalty, if ultimately adopted by the Commission, would be best undertaken on a generic basis for application to all regulated public utilities, not just one company alone, particularly in the context of a time-limited WSIC/SSIC surcharge proceeding.

The Public Staff seeks to equate the failure to achieve terms of a discount to a late fee, with respect to a regulatory disallowance. Aqua notes that the Commission has undoubtedly made ratemaking adjustments to exclude late fees and penalties from the cost of service in utility cases. However, the issue at hand clearly does not involve a late fee or penalty, and the Public Staff's effort to characterize the failure to achieve a discount as tantamount to incurring a late fee or a penalty simply falls short of the mark of a reasonable standard.

Accordingly, Aqua requests that the Commission (a) deny the Public Staff's imputation adjustment of a 2% invoice discount for well meter purchasing in this case for the reasons asserted by the Company and (b) hold that any further pursuit of this issue should be addressed on a generic basis applicable to all public utilities, if it is to be considered as a new standard of reasonableness.

**B. Public Staff's Comments Regarding Aqua's WSIC Meter Exchange Project**

The Public Staff concluded its Notice and Recommendations by stating that it continues to be concerned about the prudence and reasonableness of installation costs for Aqua's Meter Exchange Projects, which increased approximately 40% since Aqua's rate case in Docket No. W-218, Sub 497 (Sub 497 Rate Case). Given the extensive record regarding this matter in Aqua's Sub 497 Rate Case, the complexity of the issue, and the absence of the Meter Exchange Projects from Aqua's previous three-year plans, the Staff noted that the Commission has concluded that the proper proceeding in which to address the Public Staff's concerns regarding the costs of Aqua's Meter Exchange Projects, after further investigation, is Aqua's next general rate case. See *Order Approving Water and Sewer System Improvement Charges on a Provisional Basis and Requiring Customer Notice*, Docket No. W-218, Sub 526A, at 13 (November 1, 2021)

**Aqua's Response Regarding the Company's WSIC Meter Exchange Project**

Subject to one clarification,<sup>4</sup> Aqua hereby incorporates by reference and

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<sup>4</sup> On page 14, the last sentence of the first full paragraph contains an incorrect reference to the Commission's December 18, 2018 Rate Case Order in Docket No. W-218, Sub 497. The correct citation is to the Commission's October 26, 2020 Rate Case Order in Docket No. W-218, Sub 526.

reaffirms the Company's May 7, 2021 Verified Response set forth at pages 13 – 18 and the Company's June 28, 2021 Verified Response set forth as pages 10 – 16 regarding the same issues which were previously raised by the Public Staff in a prior WSIC/SSIC surcharge proceeding with respect to the Company's Meter Exchange Project. More specifically, as set forth below, Aqua continues to challenge the Public Staff's negative assertion regarding "...the absence of the Meter Exchange Projects from Aqua's previous three-year plans..." and its reference to the "...complexity of the issue..." as a basis for what Aqua anticipates may be an attempt to bootstrap itself into an unjustified expansion of the Public Staff's right to challenge prudence of AMR meter costs, which should now be legally limited to costs which the Company seeks to include in future general rate cases.

Accordingly, the Company's June 28, 2021 Verified Response bears repeating at this point as it directly pertains to the issues which continue to be raised by the Public Staff. Aqua has highlighted in bold certain portions of the Company's prior Verified Response, as quoted below, in order to emphasize the particular importance of those prior comments filed in response to the Public Staff's continuing concerns:

In its pleadings, the Public Staff contends that had Aqua followed the WSIC/SSIC rules, the Company would have provided the Public Staff with notice of its plan to implement its meter replacement program prior to its inclusion of the improvements in its April 30, 2020 WSIC/SSIC surcharge application. The Public Staff further asserts that the Company could have done this in its Ongoing Three-Year WSIC/SSIC Plans filed on April 2, 2018, and March 1, 2019, and should have done so in its WSIC/SSIC Plan filed March 2, 2020. Aqua disagrees with these assertions for the following reasons.



It was not until the Commission issued its Rate Case Order for Carolina Water Service, Inc. of North Carolina (CWSNC) on March 31, 2020, in Docket No. W-354, Sub 364, that it became clear to Aqua that AMR meters installed pursuant to the Company's Meter Exchange Project were eligible for WSIC surcharge cost recovery pursuant to G.S. 62-133.12. Until that time, Aqua had not challenged the position taken by the Public Staff that the WSIC statute only allowed cost recovery for "in-kind" meter replacements. More specifically, Aqua had not challenged the Public Staff's interpretation that replacing an analog meter with an AMR meter was not an "in-kind" replacement.

At pages 46 - 47 of the CWSNC Sub 364 Rate Case Order, the Commission specifically held that the exchange of one type of meter reading device for another type of meter reading device is an "in-kind" replacement as that term is used in G.S. 62-133.12(c)(1). With regard to AMR meter installation projects planned for the future, the Commission stated that CWSNC (and by inference, Aqua) and the Public Staff should work together pursuant to Commission Rule R7-39 to mitigate regulatory lag using WSIC recovery.

Thus, the Public Staff's assertion that Aqua could have included AMR meter projects in its Ongoing Three-Year WSIC/SSIC Plans filed on April 2, 2018, and March 1, 2019, and should have done so in its WSIC/SSIC Plan filed March 2, 2020, is inapposite. That assertion ignores the fact that until the Commission issued its CWSNC Sub 364 Rate Case Order on March 31, 2020, Aqua did not challenge the Public Staff's interpretation as applied to "in-kind" meter replacements.

The WSIC/SSIC Ongoing Three-Year Plan filed by Aqua on March 2, 2020, predated the CWSNC Sub 364 Rate Case Order and decision, which explains why AMR meter replacement projects were not included in that Plan. However, Aqua did take the Commission's CWSNC "in-kind" holding to heart and quickly included AMR meter replacement costs in its next Semi-Annual WSIC/SSIC Surcharge Application which was filed on April 30, 2020.<sup>5</sup> The Company followed that action by including line items for AMR meter replacement projects in the Company's most recent WSIC/SSIC Ongoing Three-Year Plan, filed on March 1, 2021, in Docket No. W-218, Sub 526A.

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<sup>5</sup> Aqua withdrew the April 30, 2020 WSIC/SSIC Surcharge Application by Notice filed on May 8, 2020.

Aqua further notes that the Public Staff, in its June 21, 2021 Notice, stated that it is concerned about the prudence and reasonableness of installation costs for Aqua's Meter Exchange Projects in the Company's pending WSIC/SSIC surcharge application and that the proper proceeding in which to address those concerns, after further investigation, is the Company's next general rate case. Aqua offers the following comments regarding this part of the Public Staff's Notice. In addition, out of an abundance of caution---perhaps unnecessary---with respect to any possibility of an effort to relitigate the decisions previously made by the Commission regarding AMR meters in the Sub 497 and Sub 526 Rate Cases, Aqua hereinafter addresses that possibility.

First, Aqua understands from the Public Staff's Notice, and based upon a discussion with Staff Counsel, that the Public Staff does not challenge or propose disallowance of AMR meter cost recovery in this proceeding through the WSIC surcharge mechanism. The Company is appreciative of that position. Second, **Aqua recognizes and does not dispute the right of the Public Staff to conduct a prudency investigation during the course of the Company's next general rate case with respect to the specific costs of AMR meters that Aqua seeks to recover in that case.** Third, the Commission has specifically recognized that the WSIC/SSIC Rules allow sufficient time for the Public Staff to conduct a thorough review of a utility's application for WSIC/SSIC surcharge cost recovery. Finally, Commission Orders approving WSIC/SSIC surcharges routinely state that WSIC or SSIC rate adjustments, while allowed to become effective, are not unconditionally approved, and are subject to further examination for justness and reasonableness in the WSIC and SSIC annual review and reconciliation and in the Company's next general rate case.

**Furthermore, Aqua asserts that the Public Staff's reference to "...the absence of the Meter Exchange Project from Aqua NC's previous three-year plans..." fails to provide any support or justification for a prudency investigation, particularly in view of the statements set forth above by the Company in Section D of this Verified Response. Likewise, the Public Staff's reliance on "...the extensive record regarding this matter [the prudency of Aqua's decision to install AMR meters and the costs thereof] in Aqua NC's Sub 497 Rate Case..." is an argument unnecessary and irrelevant to the right of the Public Staff to conduct an AMR meter prudence review in the Company's next general rate case with respect to and limited to the specific AMR meter costs proposed for inclusion in that proceeding.**

The Sub 497 Rate Case was an exceptionally difficult proceeding with respect to the AMR meter-related issues as well as certain other ratemaking topics, and it involved meticulous examination of those subjects. The Public Staff should not be allowed to relitigate that case as it pertained to any AMR meter issues that were decided by the Commission based upon a voluminous record and which were addressed by the Commission in its 230-page December 18, 2018 Rate Case Order.<sup>6</sup> That Order consisted of four Findings of Fact and more than 18 single-spaced pages of discussion and conclusions regarding the AMR meter issues.

The Public Staff also references “the complexity of the issue” as constituting a supporting basis for a prudency review. **Aqua does not view ratemaking issues related to the allowable costs for AMR meters eligible for inclusion in the Company’s rate base to be particularly complex. In addition, “complexity” has no bearing on the Public Staff’s right to conduct a prudency review of specific new AMR meter costs first proposed for inclusion in the Company’s next general rate case.**

**The Commission’s Sub 497 Order is important precedent and was not appealed. The determinations made therein, as well as in the Company’s most recent Sub 526 Rate Case Order (which also was not appealed), should not be reopened or relitigated. Nevertheless, prudency issues related to specific projects and costs first proposed for inclusion by Aqua in a future rate case are clearly eligible for prudency review by the Public Staff.**

Accordingly, Aqua again acknowledges the right of the Public Staff to conduct prudency review investigations in future general rate cases relative to specific and new AMR meter costs first proposed for inclusion in the Company’s cost of service. However, the Commission’s Sub 497 Order is important precedent and was not appealed. The AMR prudency determinations made therein, as well

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<sup>6</sup> The Public Staff did not appeal the Sub 497 Rate Case Order. Nor did it contest or oppose the inclusion of the additional AMR meter costs proposed by Aqua for inclusion in rates in the Company’s recent Sub 526 Rate Case, which was decided by an Order of the Commission dated October 26, 2020.

as in the Company's most recent Sub 526 Rate Case Order (which also was not appealed), should not be reopened or relitigated. In both of those cases, the Public Staff conducted full prudency reviews and investigations of the Company's AMR installations and costs. The Public Staff mounted certain heavily-contested challenges in the Sub 497 rate case which were rejected by the Commission in an Order which consisted of four findings of fact and more than 18 single-spaced pages of discussion and conclusions regarding the AMR meter issues.

Interestingly, there was no prudency challenge whatsoever by the Public Staff to the costs of purchase and installation of AMR meters proposed for inclusion in rate base by Aqua in its Sub 526 rate case. Consequently, those costs were approved by the Commission for inclusion in the Company's cost of service.

### **Conclusions**

Aqua requests that the Commission (a) deny the adjustment proposed by the Public Staff regarding imputation of a 2% invoice discount for well meter purchasing and advise the parties that any further pursuit of this issue should be done on a generic basis applicable to all public utilities; (b) again acknowledge the right of the Public Staff to conduct prudency review investigations in future general rate cases relative to specific and new AMR meter costs first proposed for inclusion in the Company's cost of service; and (c) affirm that the AMR meter ratemaking determinations previously made by the Commission in the Company's Sub 497 and Sub 526 Rate Case Orders (neither of which were appealed) may not be relitigated.

Aqua further notes that there will be one revenue requirement issue in controversy between Aqua and the Public Staff at the time this matter will be presented to and considered by the Commission at Staff Conference (the 2% discount issue). Therefore, Aqua respectfully requests that the Commission proceed to enter an Order effective for service rendered on and after January 1, 2022, approving new WSIC/SSIC surcharge percentages which comprise and reflect a decision on all revenue requirement issues not then in controversy between the parties, assuming the Commission accepts the parties' joint view on uncontested cost recovery issues. The Commission is further requested to thereafter proceed to separately consider and rule by separate Order on (a) any contested issue with an impact on revenue requirement (i.e., the imputed 2% invoice discount adjustment) and revise the applicable WSIC/SSIC surcharge percentages as necessary; and (b) the AMR Meter Exchange Project prudence and cost recovery determinations herein requested by Aqua. This procedure will, if applied to this and future WSIC/SSIC Surcharge Applications, mitigate the degree of regulatory lag and negative short-term financial impacts on the Company which occur if a decision and Order are required to be significantly delayed during consideration of contested issues by the Commission.<sup>7</sup>

Respectfully submitted this the 12<sup>th</sup> day of January 2022.

**ATTORNEYS FOR AQUA NORTH CAROLINA, INC.**

**Electronically Submitted**

**/s/Jo Anne Sanford**

North Carolina State Bar No. 6831

Sanford Law Office, PLLC

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<sup>7</sup> Aqua also included this request in both its cover letter and in the pending WSIC/SSIC Application (at pages 12 - 13) to provide specific prior notice thereof to the Commission and the Public Staff.

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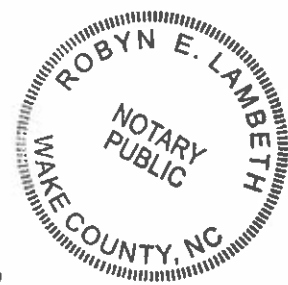
**VERIFICATION**

**Josh Howery**, being duly sworn, deposes and says: that he is the Controller of Aqua North Carolina, Inc.; that he is familiar with the facts set out in this **VERIFIED RESPONSE TO NOTICE OF PUBLIC STAFF'S PLAN TO PRESENT COMMENTS AND RECOMMENDATIONS AT THE COMMISSION'S REGULAR STAFF CONFERENCE**, filed in Docket No. W-218, Sub 526A; that he has read the foregoing Verified Response and knows the contents thereof; and that the same is true of his knowledge except as to those matters stated therein on information and belief, and as to those he believes them to be true.

  
\_\_\_\_\_  
Josh Howery

Sworn to and subscribed before me this  
the 12<sup>th</sup> day of January 2022.

  
\_\_\_\_\_  
Robyn E. Lambeth  
Notary Public



My Commission Expires: May 13 2026

**CERTIFICATE OF SERVICE**

I hereby certify that on this the 12<sup>th</sup> day of January 2022, a copy of the foregoing **VERIFIED RESPONSE TO NOTICE OF PUBLIC STAFF'S PLAN TO PRESENT COMMENTS AND RECOMMENDATIONS AT THE COMMISSION'S REGULAR STAFF CONFERENCE**, filed in Docket No. W-218, Sub 526A, has been duly served by electronic service upon the parties to this docket.

**Electronically Submitted**

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