

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. W-218, SUB 551

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application by Aqua North Carolina, Inc., for)	ORDER APPROVING SETTLEMENT
Authority to Transfer Its Systems Providing)	AGREEMENT, APPROVING
Water Utility Service in Northgate)	TRANSFER TO OWNER EXEMPT
Subdivision in Wake County, North Carolina,))	FROM REGULATION NUNC PRO
to the Town of Fuquay-Varina, which is)	TUNC, CANCELING FRANCHISE, AND
Exempt from Commission Regulation)	REQUIRING CUSTOMER NOTICE

BY THE COMMISSION: On October 6, 2021, Aqua North Carolina, Inc. (Aqua), filed an application with the Commission (Application) for authority to transfer its franchise for providing water utility service in the Northgate subdivision (Northgate) in Wake County, North Carolina, to the Town of Fuquay-Varina (Town), which is exempt from Commission regulation. Aqua provided water utility service to approximately 30 customers in the service area.

On July 20, 2023, the Public Staff - North Carolina Utilities Commission (Public Staff) filed a report in Docket No. W-100, Sub 66 providing a list of pending applications for the grant or transfer of a certificate of public convenience and necessity (CPCN) subject to Section 1.(b) of Session Law 2023-67.

On July 25, 2023, the Public Staff filed a letter with the Commission recommending that the Commission determine that Aqua's Application is complete.

On July 31, 2023, the Commission issued an order determining that Aqua's Application is complete.

On August 16, 2023, the Commission issued its Order Scheduling Hearings, Establishing Discovery Guidelines, and Requiring Customer Notice (Scheduling Order) setting this matter for a public witness hearing on October 10, 2023, and an expert witness hearing on October 16, 2023. The Notice to Customers attached to the Scheduling Order as Appendix A stated that the public witness hearing was subject to cancellation if no significant customer protests were received by October 3, 2023.

On August 22, 2023, Aqua filed a Customer Notice agreed upon by Aqua and the Public Staff for Commission approval as required by Paragraph 14 of the Scheduling Order.

On September 5, 2023, the Commission issued an Order Approving Customer Notice with Edits.

On September 6, 2023, Aqua filed a certificate of service stating that the Customer Notice was mailed or hand delivered to all affected customers as required by the Commission's September 5, 2023 Order.

Subsequent to the filing of Aqua's application in this docket, the Public Staff engaged in discovery of Aqua regarding the matters addressed by its Application.

On September 8, 2023, Aqua filed public and confidential versions of the Settlement Agreement and Stipulation to Allow Recovery of Loss on Sale between Aqua and the Public Staff (Stipulation). The Stipulation resolves all issues between the Aqua and the Public Staff (hereinafter, Stipulating Parties), provided that agreement can be reached on closing and abandonment costs allowable for recovery beyond the loss on sale amount that is agreed upon in part II.B. of the Stipulation. The Stipulation states that the closing and abandonment costs referenced in part II.C. of the Stipulation will not be known in full until closing occurs, so the Stipulating Parties have agreed that Aqua will provide supporting invoices, the Public Staff will review that documentation, and reasonable and prudent closing and abandonment costs up to a limit of \$15,000 may be recovered pursuant to part II.C. of the Stipulation. The Stipulation further states that items included in parts II.B. and II.C. shall be included as loss on sale and abandonment of system, with amortization over a 10-year period, beginning at the effective date of rates approved in Aqua's next general rate case, and that there will be no return on the unamortized balance of remaining net book value or allowed closing costs.

On September 12, 2023, Aqua filed on behalf of the Stipulating Parties a Joint Motion to Excuse Witnesses from Prefiling Testimony. The motion states that the Stipulation and verified application for transfer to an owner exempt from regulation provide a factual background sufficient to support an order without expert witness testimony and that the Public Staff may present this matter on the agenda for a Regular Staff Conference in lieu of hearing if there are no issues raised by customers. The motion further states that if the public witness hearing is not cancelled and customers do raise issues, the Stipulating Parties would make witnesses available at the scheduled expert witness hearing to address those issues.

On September 14, 2023, the Commission issued an Order Excusing Prefiled Testimony. The Order states that if the terms of the Stipulation are not met or if another party intervenes in the proceeding, the Commission may require the filing of testimony.

On October 5, 2023, the Public Staff filed on behalf of the Stipulating Parties a Joint Motion to Cancel the Public and Expert Witness Hearings. The joint motion states that no consumer statements of position were filed in the docket for this matter, and Aqua was unaware of any customer protests or comments made in connection with this matter.

On October 6, 2023, the Commission issued an Order Canceling Public Witness and Expert Witness Hearings and Requiring Customer Notice.

On October 10, 2023, Aqua filed the certificate of service stating that the Commission's Order of October 6, 2023, was mailed or hand delivered to all affected customers by the date specified in the Order.

The Public Staff presented this matter at the Commission's Regular Staff Conference on December 11, 2023. The Public Staff recommends approval of the transfer and the Stipulation between Aqua and the Public Staff.

Based upon the foregoing, including the application, the Stipulation, and the entire record in this proceeding, the Commission makes the following

FINDINGS OF FACT

1. Aqua holds a Certificate of Public Convenience and Necessity to provide water utility service to Northgate pursuant to the Commission's Order Approving Merger of Fairways, Glynnwood, Mountain Point, Rayco, Willowbrook, and Heather into Aqua issued on December 5, 2008, in Docket Nos. W-218, Sub 273; W-787, Sub 38; W-1032, Sub 11; W-274, Sub 687; W-989, Sub 11; W-899, Sub 39; and W-981, Sub 13.

2. At the time it filed its transfer application, Aqua served 30 customers in Northgate.

3. Aqua's present water utility rates, which were approved in Docket No. W-218, Sub 573, by the Commission's Order Approving Motion on Wastewater Rate Design and Approving Schedules of Rates, Schedules of Connection Fees, and Customer Notices, dated July 31, 2031, are as follows:

Monthly Metered Water Utility Service

Base facility charge, (zero usage, based on meter size)	
<1" meter	\$ 21.10
Usage charge, per 1,000 gallons	\$ 8.48

4. The Town's present water utility rates are as follows:

Monthly Metered Water Utility Service

Base facility charge, (zero usage, based on meter size)	
$\frac{3}{4}$ " meter	\$ 13.49
Usage charge, per 1,000 gallons	\$ 6.82

5. On May 5, 2021, Aqua, Aqua America, Inc. (collectively, Aqua), Lear Corporation (Lear), and the property owners and residents of Northgate entered into a

settlement agreement (2021 Settlement Agreement), pursuant to which Aqua would transfer to Lear, for a confidential amount of consideration, ownership of Aqua's assets necessary to provide water service to Northgate. The 2021 Settlement Agreement further provides that, upon the Town's provision of water service to Northgate and Aqua's receipt of all necessary approvals, Aqua will close its well and remove its equipment except for its water main, which Lear would convert to a sewer force main.

6. On April 28, 2022, Aqua received approval from the North Carolina Department of Environmental Quality to deactivate its water system in Northgate. The Town began providing service to residents of Northgate the same day.

7. Aqua will incur closing and abandonment costs in connection with the transfer. The exact amount of those costs will not be known until the transfer is complete.

8. The transfer will result in lower water rates for the customers in the affected service area, decreasing the average monthly residential water bill by \$15.91, or approximately 25%, from \$63.50 to \$47.59, based on 5,000 gallons of usage.

9. The revenues and costs associated with Northgate were removed from the rate case in Docket No. W-218, Sub 573; therefore, this transfer will not have a material financial impact on the remaining Aqua Water customers.

10. The following terms of the Stipulation filed by the Stipulating Parties in these dockets resolve or provide an agreed upon procedure for the resolution of all contested issues related to Aqua's recovery of its costs of the transfer of the Northgate system.

A. Basis for Recovery of Abandonment Loss and Closing and Abandonment Costs. Historically, gain or loss on sale of utility assets for an entire system was assigned to the utility's shareholders; however, in compelling circumstances an exception may be justified for public policy reasons. See Order Determining Regulatory Treatment of Gain on Sale, issued December 23, 2011, in Docket No. W-354, Sub 331, *affirmed State ex rel. Utilities Commission v. Carolina Water Service, Inc. of North Carolina*, 225 N.C. App 120 (2013). In the present case, the following compelling circumstances exist to support Aqua's recovery of its loss on sale:

(i) The type of contamination of the well water presents a public health hazard;

(ii) Aqua is not at fault for that contamination;

(iii) Providing water utility service through the Town, which has a different water source, is the most cost-effective path to providing acceptable water quality to the Northgate customers;

(iv) A Northgate customer using 5,000 gallons of water monthly will pay the Town a monthly bill of \$47.59, compared to a monthly bill of \$63.50 for the same monthly usage under Aqua's water rates from Docket No. W-218, Sub 573;

(v) The Northgate customers will not have to pay for extending the Town's distribution system to serve them, nor will they have to pay connection costs to the Town; and

(vi) Aqua voluntarily participated in the Agreement that requires transfer of Aqua's Northgate water system assets to the Town via Lear, in lieu of investing additional monies on a treatment system that would otherwise increase rate base, operating expense, Aqua's net income and, resultingly, rates for its consolidated customers.

B. In confidential Part II.B., the Stipulating Parties agreed to the amount of the loss on sale.

C. Closing and Abandonment Costs. The Public Staff agrees that Aqua may recover up to \$15,000 of prudently incurred closing and abandonment costs. The actual amount of closing and abandonment costs and supporting invoices will be submitted upon their completion and receipt by Aqua to the Public Staff, and the Public Staff will either verify that \$15,000 of that amount was prudently incurred, or if the Parties disagree that \$15,000 of closing and abandonment costs was prudently incurred, they may submit their respective positions to the Commission for decision in the next general rate case proceeding, or as otherwise ordered by the Commission.

D. Items included in Subsection B and C above shall be included as loss on sale and abandonment of system, with amortization over a 10-year period, beginning at the effective date of rates approved in Aqua's next general rate case, and no return calculated on the unamortized balance.

11. The Public Staff and Aqua both support the transfer as serving the public interest. The quality of water provided through the Town's water system is better than the well sources within the community.

12. The Public Staff and Aqua agree that the cost recovery terms documented within the Stipulation provide a reasonable option to address the Northgate water quality concerns for the Northgate residents and Aqua's remaining consolidated water customers.

13. The Stipulation is the product of give-and-take in settlement negotiations between the Public Staff and Aqua, is material evidence in this proceeding, and is entitled to be given appropriate weight in this case, along with other evidence from the Company and the Public Staff.

CONCLUSIONS

Based on the foregoing and the recommendations of the Public Staff, the Commission concludes that the Stipulation should be approved; that the transfer of ownership of the system should be approved; that the franchise should be canceled upon receipt of notification that the transfer is complete; and that customer notice should be required.

IT IS, THEREFORE, ORDERED as follows:

1. That the Stipulation between Aqua and the Public Staff is approved in its entirety;
2. That Aqua is hereby authorized to transfer its water utility system serving Northgate in Wake County, North Carolina, to the Town of Fuquay-Varina, an owner exempt from Commission regulation;
3. That the Certificate of Public Convenience and Necessity to provide water utility service granted to Aqua in Docket No. W-218, Sub 273, for Northgate in Wake County, North Carolina, is hereby canceled;
4. That a copy of this Order shall be mailed with sufficient postage or hand delivered by Aqua to all its customers in Northgate not later than 15 days after the date of this Order and that Aqua shall submit to the Commission the attached Certificate of Service properly signed and notarized not later than 30 days after the date of this Order; and
5. That Aqua shall notify the Commission within five business days after the closing of the transfer provided for in the 2021 Settlement Agreement.

ISSUED BY ORDER OF THE COMMISSION.

This the 12th day of December, 2023.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in dark ink, appearing to read "Tamika D. Conyers", is written over a horizontal line.

Tamika D. Conyers, Deputy Clerk

CERTIFICATE OF SERVICE

I, _____, mailed with sufficient postage or hand delivered to all affected customers the attached Order issued by the North Carolina Utilities Commission in Docket No. W-218, Sub 551, and the Order was mailed or hand delivered by the date specified in the Order.

This the _____ day of _____, 2023.

By: _____
Signature

Name of Utility Company

The above named Applicant, _____, personally appeared before me this day and, being first duly sworn, says that the required Order was mailed or hand delivered to all affected customers, as required by the Commission Order dated _____ in Docket No. W-218, Sub 551.

Witness my hand and notarial seal, this the _____ day of _____, 2023.

Notary Public

Printed Name

(SEAL) My Commission Expires:

Date