

**DOCKET NO. W-218, SUB 570  
DOCKET NO. W-218, SUB 571  
DOCKET NO. W-218, SUB 573  
REGULATORY CONDITIONS**

These Regulatory Conditions set forth commitments made by Essential Utilities, Inc. (Essential Utilities), Aqua Water Holdings, Inc. (Water Holdings), ~~Essential Utilities Services, Inc. (Essential Services)~~, Aqua Services, Inc. (Aqua Services), and Aqua North Carolina, Inc. (Aqua NC), as a precondition of approval of the of the Application by Aqua NC, for authority to Adjust and Increase Rates for Water and Sewer Utility Service in All Its Service Areas in North Carolina and for Approval of a Water and Sewer Investment Plan (WSIP) (Sub 573), approval for petition Aqua NC pursuant to N.C. Gen. Stat. § 62-111(a) for authority to implement certain corporate reorganizational changes (Reorganization)(Sub 571), approval of the Affiliated Interest Agreement between Aqua Services and Aqua North Carolina, Inc. pursuant to G.S. §62-153(a) (Affiliate Agreement)AIA (Sub 570).-and approval of Company rate case (Sub 573). These Regulatory Conditions, which become effective only upon approval by the North Carolina Utilities Commission of the Docket No.W-218, Sub 570, Docket No, W-218, Sub 571 and Docket No. W-218, Sub 573petitions, shall apply jointly and severally to Essential Utilities, Water Holdings, ~~Essential Services~~, Aqua Services, and Aqua NC (as well as any successor entities), ~~and shall be interpreted in the manner that ensures Aqua NC's customers (a) are protected from any known adverse effects from the Reorganization, (b) are protected as much as possible from potential costs and~~

~~risks resulting from the Reorganization, and (c) receive sufficient known and expected benefits to offset any potential costs and risks resulting from the Reorganization.~~

For purposes of these Regulatory Conditions, the North Carolina Utilities Commission is referred to as “the Commission,” and the Public Staff – North Carolina Utilities Commission is referred to as “the Public Staff.” “Affiliate” shall mean Essential Utilities and any business entity of which ten percent (10%)), or more is owned or controlled, directly or indirectly, by Essential Utilities, including, but not limited to, Water Holdings, Essential Services, Aqua Services, and Aqua NC.

1. **Reorganization-related Expenses and Capital Costs.** Any expenses or capital costs associated with the Reorganization or transitioning to the reorganized entity will be excluded from the regulated expenses of Aqua NC for Commission financial reporting and ratemaking purposes. Reorganization expenses and capital costs include, but are not limited to, change-in-control payments made to terminated executives, Reorganization-related bonuses, severance payments, regulatory process costs, and transaction fees (such as investment banker and legal fees for transaction structuring, financial market analysis, and fairness opinions based on formal agreements with investment bankers). Aqua NC will file a summary report of its final accounting for Reorganization-related expenses and capital costs within 120 days after the close of the Reorganization, and

supplemental reports within 60 days after each quarter until such expenses and capital costs cease to be incurred.

Docket No. W- 218, SUB 571

AQUA'S RESPONSE: Accepted.

2. **Costs to Achieve Reorganization Savings.** Aqua NC shall report the actual costs to achieve savings from the Reorganization, if any, on its Quarterly Earnings Reports<sup>1</sup> in accordance with generally accepted accounting principles and identify the North Carolina portions of these costs beginning with the first quarter after the Reorganization closes.

Docket No. W-218, SUB 571

AQUA'S RESPONSE: Accepted.

3. **Inclusion of Cost Savings in Future Rate Proceedings.** For purposes of future general rate case proceedings for Aqua NC, Aqua NC and the Public Staff shall—not be limited to or constrained by the provisions of these Regulatory Conditions in asserting or sustaining arguments regarding the proper treatment of Reorganization cost savings in setting just and reasonable rates for Aqua NC.

Docket No. W- 218, SUB 571

AQUA'S RESPONSE: Accepted.

4. **Hold Harmless Commitment.** The Reorganization shall be effectuated in a manner designed to prevent harm to Aqua NC's ratepayers, although

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<sup>1</sup> Quarterly Earnings reports are filed with the Commission in accordance with Commission Rules R7-39 and R10-26.

it is recognized that matters not currently foreseeable could possibly have the potential to negatively impact Aqua NC ratepayers in the future. Notwithstanding this, Essential Utilities, Water Holdings, Essential Services, Aqua Services, and Aqua NC (as well as any successor entities exercising control over Aqua NC) shall take all such actions as may be reasonably necessary and appropriate to hold Aqua NC's customers harmless from the effects of the Reorganization.

Docket No. W-218, SUB 571

AQUA'S RESPONSE: Accepted.

~~5. **Distributions to Essential Utilities and Water Holdings.** Aqua NC shall not pay to Essential Utilities or Water Holdings any distribution exceeding 100% of Aqua NC's net income calculated on a two-year rolling average basis. In addition, Aqua NC shall limit cumulative distributions paid to Essential Utilities or Water Holdings subsequent to closure of the Reorganization to (i) the amount of its retained earnings on the day prior to the closure of the Reorganization, plus (ii) any future earnings recorded by Aqua NC subsequent to closure of the Reorganization. Aqua NC shall not make any distributions to any Affiliates other than Essential Utilities or Water Holdings, unless approved by the Commission. The Commission retains the right to impose future limitations on distributions of Aqua NC if the public interest requires, as provided pursuant to applicable law and prior Commission orders.~~

Docket No. W-218, Sub 571

AQUA'S RESPONSE:

Aqua NC does not go out for debt and does not send "distributions" back to parent. Retained earnings do not go to parent. This paragraph should be removed.

**6.5. Protection Against Debt Downgrade.** To the extent the cost rates of any of Essential Utilities' and/or Aqua NC's long-term debt (more than one year) are or have been adversely affected as a result of the Reorganization through a ratings downgrade by any one of the three credit rating agencies<sup>2</sup> or an indicative credit rating associated with a private placement of debt associated with the Reorganization, a replacement cost rate to remove the effect shall be used for all purposes affecting any of Aqua NC's North Carolina rates and charges. This replacement cost rate shall be applicable to all financings, refundings, and refinancings taking place following the change in ratings. If a downgrade has occurred and is continuing, a replacement cost calculation will be determined, as part of Aqua NC's future general rate cases. The replacement rate should be commensurate with an A rating. This Regulatory Condition applies strictly to an adverse affect caused by the Reorganization and not another future condition and will continue for five years after the consummation of the Reorganization, at which time it shall terminate without further order of the Commission.

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<sup>2</sup> The three rating agencies are Moody's Investors Service, S&P Global Ratings, and Fitch Ratings.

Docket No. W-218, Sub 571

AQUA'S RESPONSE: Aqua agrees with this conditions with the suggested edits above that this only applies for a downgrade due to the Reorganization (i.e. creation of the Water Holdings Company) and not another future condition.

7.6. **Notice of Certain Investments.** Whenever Essential Utilities or Water Holdings makes any new or increased direct or indirect investment in a business entity where such investment appears or will appear on the books of Essential Utilities or Water Holdings and the amount of such investment is equal to 10% or more of Essential Utilities' or Water Holding's book capitalization, the investing entity shall file or cause to be filed, as soon as practicable following Board or other approval of the subject transaction and any public announcement thereof (if one is made), a notice of the investment with the Commission. The notice shall include a full description of the investment and an explanation of how it will be accounted for in the investing entity's books and records. This condition shall continue for five years after the consummation of the Reorganization, at which time it shall terminate without further order of the Commission.

Docket No. W-218, SUB 571

AQUA'S RESPONSE: That the provision be limited in duration until five years after the consummation of the Reorganization.

8.7. **Notice of Certain Essential Utilities and Water Holdings Investments.** Aqua NC shall file a notice with the Commission,

subsequent to Essential Utilities Board or Water Holdings Board approval and as soon as practicable following any public announcement (if one is made), of any new investment of \$50,000,000 or more in a regulated utility by Essential Utilities or any Affiliate. Further, this Condition shall exist only for a total of five years from consummation of the Reorganization, at which time it shall terminate without further order of the Commission.

Docket No. W-218, SUB 571

AQUA'S RESPONSE: Limit to a \$50,000,000 threshold on the triggering event for the reporting requirement and a five year duration.

**9.8. Notice by Aqua NC of Default or Bankruptcy of Affiliate.** If Essential Utilities or an Affiliate of Aqua NC experiences a default on an obligation that is material to Essential Utilities or Water Holdings or files for bankruptcy, and such bankruptcy is material to Essential Utilities or Water Holdings, Aqua NC shall notify the Commission of the event in advance, if possible, or, if not, as soon as possible but not later than ten days after such event. For purposes of this section, materiality shall be any default or bankruptcy that would be required to be disclosed in the audited financial statements of Essential Utilities.

Docket No. W-218, Sub 571

AQUA'S RESPONSE: Accepted.

**10.9. Common Equity Capital.** Until the final order is issued in Aqua NC's next general rate case, Aqua NC will maintain common equity capital at levels equal to or greater than 45% of total adjusted capital (including

common equity, long-term debt, long-term capital leases, and current maturities of long-term debt). No equity distributions, whether by dividend or other form, will be allowed that would result in equity capital falling below this minimum level during the specified period, without prior approval of the Commission. Notwithstanding the foregoing, Aqua NC shall maintain the right to petition the Commission for an exception to this Regulatory Condition.

Docket No. 518, SUB 571

AQUA'S RESPONSE: Accepted.

~~41.10.~~ **Post-Closing Financial Information.** Aqua NC shall file pre- and post-Reorganization closing balance sheets and the closing journal entries, including relevant descriptions and disclosures for the transactions recorded, for Essential Utilities, Water Holdings, and itself, as soon as practicable but not later than the end of the second full quarter following the close of the Reorganization.

Docket No. 518, SUB 571

AQUA'S RESPONSE: Accepted.

~~42.11.~~ **Meetings with Public Staff.** Essential Utilities, Water Holdings, and Aqua NC shall meet ~~meet annually,~~ upon request of Public Staff, with the Public Staff to discuss Aqua NC's financial condition and results, service quality initiatives and results, customer service changes, and potential new tariffs.

Docket No. W- 518, SUB 571

AQUA'S RESPONSE: See suggested edits above.

13.12. Service Company Formation. Aqua NC shall notify the Commission ~~of any plans of any Affiliate to form a service company that, to the best knowledge of Essential Utilities, the Affiliate, or Aqua NC, could potentially cause preemption of the Commission's jurisdiction over Aqua NC or would affect, take services from, or provide services to Aqua NC,~~ at least 60 days prior to the formation of an additional~~such service~~additional service company that provides to or receives services from Aqua NC. Aqua NC will take all such actions, to the extent possible, as the Commission finds necessary and appropriate to hold North Carolina ratepayers harmless from any preemption that may be triggered by the formation of a service company.

Docket No. W-218, SUB 570

13. AQUA'S RESPONSE: See suggested edits above.

14. Access to Books and Records. In accordance with and to the extent provided by North Carolina law, the Commission and the Public Staff shall continue to have access to the books and records of Aqua NC and its Affiliates.

Docket No. W-218, Sub 570, Docket No. W-218, Sub 571, Docket No. W-218, Sub 573

AQUA RESPONSE: Accepted.

15. Changes to Board of Directors or Management. Aqua NC shall provided updated information regarding ~~shall notify the Commission within~~

~~ten days of any changes to~~ the Board of Directors or management of Essential Utilities, Water Holdings, Essential Services, Aqua Services, or Aqua NC upon request from Public Staff.

Docket No. W-218, Sub 571

AQUA'S RESPONSE: See edits above.

~~14.~~ **Notice and Consultation with Public Staff Regarding Proposed Structural and Organizational Changes.** Upon request, ~~or at least 60 days before such changes are to become effective,~~ Essential Utilities, Water Holdings, and Aqua NC shall notify, meet and consult with, and provide requested relevant data to, the Public Staff regarding plans for significant changes in Aqua NC's or any of its Affiliates' organization, structure, and activities which are reasonably anticipated to affect Aqua NC; the expected or potential impact of such changes on Aqua NC's rates, operations and service; and proposals for assuring that such plans do not adversely affect Aqua NC's customers.

16.

Docket No. W-218, Sub 571, Docket No. W-218, Sub 573

AQUA'S RESPONSE: See edit above.

These requirements conflict with the core management and organizational responsibility that is uniquely the Company's prerogative. The Company is responsible for decisions about organization and structure and though it is accountable to regulators (and shareholders) for the results thereof, Aqua does not believe these are matters which should require prior consultation.

**17. Mergers and Acquisitions.** For any proposed merger or other business combination<sup>3</sup> that would affect Aqua NC, Aqua NC shall file an application for approval pursuant to N.C.G.S. § 62-111(a) at least ~~180~~90 days before the proposed closing date for such merger or other business combination, unless for good cause shown it is not reasonably possible to do so.

Docket No. W-218, Sub 571

AQUA'S RESPONSE: See suggested edits above.

**15-18. Financial Statements.** By the end of the first quarter of each calendar year, Aqua NC will provide to the Public Staff audited financial statements of Essential Utilities, and the financial statements of Water Holdings and Aqua NC (audited, if available) for the preceding calendar year.

Docket No. W-218, Sub 571

AQUA'S RESPONSE:

**16-19. Obligations with Affiliates.** Aqua NC will not make a loan to any Affiliate, issue a guarantee for an obligation of any Affiliate, or otherwise assume any obligation of any Affiliate without prior Commission approval.

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<sup>3</sup> For purposes of these Regulatory Conditions, a "merger or other business combination" is defined as not simply an investment in a business entity, but as a transaction or other event in which either (1) an acquirer obtains control of one or more business entities, or (2) two or more previously separate business entities merge into one with newly defined or established control authority.

Docket No. W-218, Sub 570.

**AQUA'S RESPONSE:** Accepted.

**Capital Budgets.** Aqua NC shall maintain a level of capital and operational support in North Carolina necessary to provide safe, efficient, and reliable service at reasonable rates.

Docket No. W-218, Sub 573

AQUA'S RESPONSE: See suggested edits above. The Company believe that the capital budget reporting will be covered by the Commission's rate order in Docket No. W-218, Sub 573.

17.20. **Regulatory Reporting Requirements.** Aqua NC shall comply with all regulatory reporting requirements.

Docket No. W-218, Sub 570, Docket No. W-218, Sub 571, Docket No. W-218, Sub 573

AQUA'S RESPONSE: Accepted.

18.21. **Regulatory Staffing.** Aqua NC shall maintain sufficient, adequately trained personnel to ensure that regulatory requirements are complied with in a timely and accurate manner. Upon request, Aqua NC shall providenotify the Public Staff ~~when there is any change in regulatory or operational personnel at the management/supervisor level. Each year by June 30, Aqua NC shall provide the Public Staff~~ with an updated directory of

personnel, including titles, phone numbers, and e-mail addresses. ~~on an annual basis or whenever requested by the Public Staff.~~

Docket No. W-218, Sub 570, Docket No. W-218, Sub 571, Docket No. W-218, 573

**AQUA'S RESPONSE:** See suggested edits above.

AQUA'S RESPONSE:: Under the Aqua Services – Aqua NC Affiliate agreement, Aqua Services provides customer service and billing service to Aqua NC. Aqua submits that much of the language proposed addresses matters that are basic to ordinary operations of the utility and do not rise to the level of Regulatory Conditions.

**22. Customer Surveys.** Aqua NC shall continue to informally survey its customers regarding their satisfaction with Aqua NC's public utility service and shall incorporate this information into its processes, programs, and services.

Docket No. W-218, Sub 570, Docket No. W-218, Sub 571, Docket No. W-218, Sub 573

AQUA'S RESPONSE: Accepted.

**23. Overall Service Quality.** Upon consummation of the Reorganization, Aqua NC shall continue its commitment to provide safe, reliable, and affordable water and sewer service.

Docket No. W-218, Sub 571

AQUA'S RESPONSE: Accepted.

~~—Shared Goods and Services. Within 90 days of the Reorganization, Aqua NC shall provide a list of items determined to be the shared goods and services of Aqua NC and all other Affiliates, and the basis for each determination.~~

AQUA'S RESPONSE:

The shared goods and services are provided for in the AIA and are the same as those in the previous AIA – the information is part of the docket (Sub 570) for the updated Affiliate Agreement.

**24. Cost Allocation Manual.** Aqua NC shall keep on file with the Commission a cost allocation manual (CAM) with respect to goods or services provided between and among Aqua NC and its Affiliates. Aqua NC shall not commit to any cost allocation that would result from any changes to such CAM or list of goods and services until ten days after it has filed such changes with the Commission. ~~The CAM shall be updated annually, and the revised CAM shall be filed with the Commission no later than March 31 of the year that the CAM is to be in effect.~~ The CAM shall also be updated whenever the structure of either Essential Utilities' or Water Holdings' corporate entities or the relationships between Affiliates are changed.

Docket No. W-218, Sub 570

AQUA'S RESPONSE: See suggested edits above.

**25. Charges for and Allocations of the Costs of Affiliate Transactions.**

Affiliate transactions will be directly charged where practicable. The CAM shall encompass transactions, allocations, and the bases for the

allocations occurring (a) at the Essential Utilities level and below, and (b) with any Affiliate with which Aqua NC has a frequent or continuing cost allocation or transaction relationship, either directly or indirectly through Essential Utilities or a direct or indirect subsidiary of Essential Utilities, including any and all service companies.

Docket No. W-218, Sub 570

AQUA'S RESPONSE: Accepted.

~~19.26. **Transfer Pricing Between Affiliates.** For untariffed goods and services provided by Aqua NC to a non-utility Affiliate, the transfer price paid to Aqua NC shall be set at the higher of market value or Aqua NC's cost(s). For untariffed goods and services provided to Aqua NC by a non-utility Affiliate, the transfer price(s) charged by a non-utility Affiliate to Aqua NC shall be set at the lower of market value or the non-utility Affiliate's cost(s). Services provided by Aqua NC to utility Affiliates or by utility Affiliates to Aqua NC shall be transferred at the supplier's cost, unless otherwise directed by order of the Commission, except that Aqua NC shall not take any service from an Affiliate under circumstances where the costs incurred for that service (whether directly or through allocation) exceed fair market value. Services provided by a service company to Aqua NC shall be provided at cost, except that Aqua NC shall not pay any amount for a service that exceeds the fair market value of that service.~~

AQUA'S RESPONSE:

This is all covered in the Aqua Services/Aqua NC Affiliate Agreement, filed

in Docket W-218 Sub 570.

~~20. **Transfer of Services, Functions, Employees, or Assets.** Aqua NC shall file notice with the Commission 60 days prior to the initial transfer of any services, functions, employees, or assets from Aqua NC to a service company or another Affiliate, or any subsequent transfer of any services, functions, employees, or assets from Aqua NC to a service company or another Affiliate that would have an effect on Aqua NC's ratepayers.~~

~~21.~~

22-27. **Affiliated Agreements.** Aqua NC shall file pursuant to N.C.G.S. § 62-153 agreements for the provision and receipt of goods or services between and among Aqua NC and its Affiliates. All such agreements that involve payment of fees or other compensation by Aqua NC shall require acceptance and authorization by the Commission and shall be subject to any other Commission action required or authorized by North Carolina law and the Rules and orders of the Commission. Prior to making any changes to existing agreements, Aqua NC shall file such changes with the Commission.

Docket No. W-218, Sub 570.

**AQUA'S RESPONSE:** The Company has filed an updated AIA in Docket W-218, Sub 570.

28. **Affiliate Transactions Report.** Aqua NC shall file an annual report of

affiliated transactions with the Commission, ~~in a format prescribed by the Commission.~~ The first such report on affiliated transactions shall be filed on March 31, 202~~4~~<sup>3</sup>, for activity through December 31, 202~~3~~<sup>2</sup>, and annually thereafter on March 31 for the activity from January 1 through December 31 of the preceding year.

Docket No. W-218, Sub 570.

AQUA'S -RESPONSE: See suggested edits.