

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
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.**

Pursuant to Commission Rule R1-19, R1-9, and North Carolina General Statutes, Section 62-73, Carolina Meadows, Inc. ("Carolina Meadows"), through undersigned counsel, respectfully submits this Petition for Leave to Intervene Out of Time and for an Order Declaring Invalid the Partial Settlement Agreement and Stipulation filed by the parties on July 1, 2020 as it specifically applies to Carolina Meadows, or in the alternative to treat this Petition as a customer complaint petition against Aqua's proposed billing scheme and its unlawful, unjust, and discriminatory actions in this proceeding. As grounds for this motion, Carolina Meadows shows the Commission as follows:

In his hearing testimony on July 9, 2020, the Public Staff's witness, Charles Junis, disclosed for the first time that, as part of their, Aqua North Carolina, Inc., ("Aqua") has

reached an agreement to increase Carolina Meadows' base facility rate—and only Carolina Meadows' base facility rate—to a level that will ultimately reach 1,300% of its current charges (“Stipulation”). *See Junis Hr’g. Testimony, Transcr. Vol. 5*, pp. 75-76. This agreement to increase Carolina Meadows' rate is not disclosed in the text of the stipulation itself, which instead only recites that the parties have stipulated that the Aqua wastewater treatment plant that serves Carolina Meadows will not be subject to any excess capacity adjustments. *See Partial Settlement Agreement and Stipulation*, ¶ U, p. 9. This agreement is contrary to Aqua's filed rates, customer service classifications, cost of service, and the notices provided to Carolina Meadows and the public regarding the rate relief requested in this proceeding. The increase is also based on a flawed methodology that has been discriminatorily applied to only Carolina Meadows.

Accordingly, Carolina Meadows seeks leave to intervene, and respectfully requests that the Commission enter an order declaring the Stipulation void, illegal and of no effect. Alternatively, Carolina Meadows asks the Commission to treat this Petition as a customer complaint petition against Aqua's proposed billing scheme and its unlawful, unjust and discriminatory actions in this proceeding.

In further support of the Petition, Carolina Meadows shows the following:

1. Carolina Meadows is a multi-resident, senior care facility located in Chatham County, North Carolina. The address for Carolina Meadows is 100 Whippoorwill Ln, Chapel Hill, NC 27517. Petitioner's representative in this proceeding, to whom all notices, pleadings, and other documents related to this proceeding should be directed is:

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2. Carolina Meadows' wastewater is treated at the Carolina Meadows Wastewater Treatment Plant ("WWTP") located adjacent to the facility. Until 2005, Carolina Meadows owned and (through a contracted service provider) operated both its sewer collection system and the WWTP. *McLeod Affidavit*, ¶6.

3. In 2005, Carolina Meadows and its joint owners sold the WWTP, along with two small lift stations and force mains to Aqua's predecessor in interest and became a customer of Aqua.¹ Aqua paid only \$95,000 in cash consideration for Carolina Meadows' majority interest in the WWTP, which cost many times that amount to build. *McLeod Affidavit*, ¶7.

4. At the time of the transfer, Aqua agreed to install a single, six-inch sewer meter on which to bill Carolina Meadows for its sewer service. This meter has been

¹ Although Carolina Meadows sold the WWTP to Aqua, it retained ownership of the sewer collection system for the facility. Accordingly, the entire system on Carolina Meadows' side of the connection, which includes the collection system for all units at the facility, is owned, maintained, and operated by Carolina Meadows, not Aqua. Further, Aqua bills Carolina Meadows for all sewer services at the site under a single account.

continuously used to determine Carolina Meadows' monthly sewer charges since that time. *See McLeod Affidavit*, ¶¶9–10; *Stannard Affidavit*, ¶9. Carolina Meadows retained ownership and responsibility for its sewer collection system. *Stannard Affidavit*, ¶10.

5. Because Carolina Meadows operates its own wastewater collection system, Aqua incurs no expense associated with that wastewater collection system or any meter reading expense, customer service expense or billing costs except those associated with the single bill it sends Carolina Meadows each month for actual usages as measured through its single six-inch meter. *Stannard Affidavit*, ¶20.

6. Carolina Meadows' current monthly base facility charge is \$1,305.50 for the one, six-inch meter connection to Aqua's sewer system. *Stannard Affidavit*, ¶16. In the application in this proceeding, Aqua requested a \$68.50 increase to its monthly base facility rate for a six-inch meter, an approximately 5.24% change. *See Stannard Affidavit*, ¶16. It appears Carolina Meadows is the only customer subject to this rate.

7. Both the continued applicability of the six-inch meter rate and the \$68.50 per-month proposed increase were plainly stated in the public notice of this proceeding. In reliance on those facts, Carolina Meadows did not oppose the requested increase in the base facility charge or seek to intervene in this proceeding at that time. *See McLeod Affidavit*, ¶16.

8. Unbeknownst to Carolina Meadows, during the course of this proceeding Aqua reached an agreement with the Public Staff under which Aqua singles out Carolina Meadows by name for a nearly 1,300% increase in its base facility charges, which is to be implemented in two stages. *Stannard Affidavit*, ¶12.

9. According to the Public Staff's expert, Charles Junis, the agreement was reached as part of settlement negotiations concerning whether an excess capacity adjustment should be applied to Aqua's wastewater treatment plants. *Stannard Affidavit*, ¶¶, 12, 18. Mr. Junis acknowledged that he did not agree with Aqua's proposed methodology for calculating Carolina Meadows' base facility charge, but the Public Staff agreed to it as part of the "give-and-take" inherent in settlement discussions. *Junis Hr'g. Testimony, Transcr. Vol. 4*, p.340. Mr. Junis also acknowledged that, due to the "magnitude and suddenness" of the increase, Aqua agreed to impose 50% of the increase in this current rate case, and then the remainder of the increase in the next rate case. *Junis Hr'g. Testimony, Transcr. Vol. 5*, pp. 75–76.

10. Carolina Meadows receives only a single monthly bill from its water provider, Chatham County. However, in order to properly allocate costs among the retirees who reside at its facility, it maintains sub-meters for units and various portions of its facility. *McLeod Affidavit*, ¶5.

11. As explained in Mr. Stannard's Affidavit, despite more than a decade of assessing Carolina Meadows' base facility charge based on the one, six-inch *sewer* meter, Aqua and the Public Staff have agreed to now calculate Carolina Meadows' base facility charge base on the fact Chatham County maintains 278 sub-meters for *water service*. *Stannard Affidavit*, ¶18–21. This is the case even though Aqua's services have nothing to do with these water meters. *See Stannard Affidavit*, ¶20. Instead, Aqua's services relate to only wastewater treatment which is precisely metered at the six-inch sewer meter through which service is provided. *Id.*

12. Attempting to resolve Aqua's asserted excess capacity issue by increasing Carolina Meadows' base charges by an amount that will ultimately exceed \$200,000 per year is particular unfair since Carolina Meadows built the WWTP and transferred its majority interest to Aqua for only \$95,000. Through the base charge, as contemplated under the Stipulation, every six months, Carolina Meadows will pay Aqua more than the entire price Aqua paid for Carolina Meadows interest in the WWTP.

13. Billing Carolina Meadows for 278 separate base charges incorrectly assumes that Aqua is incurring the billing costs, customer service costs, collection system costs, lateral costs, meter costs and other costs associated with serving 278 separate customers. This assumption is simply not true and is a patent violation of the cost causation principles that apply to setting just and reasonable rates. *Stannard Affidavit*, ¶20.

14. If implemented, this individually negotiated rate structure would result in substantial overcharges to Carolina Meadows that do not reflect the cost of service to Carolina Meadows. *Stannard Affidavit*, ¶20–22.

15. By attempting to base its billing on the count of water meters maintained by Chatham County instead of the single, six-inch sewer meter through which service is provided, the Public Staff and Aqua have stipulated to a flawed ratemaking methodology. *Id.*

16. The stipulated rate structure is also the product of an individualized rate-making, which is not appropriate in a general rate-making proceeding. *See* N.C.G.S. § 62-137 (“Commission shall declare the scope of the hearing by determining whether it is to be a general rate case ... or whether it is to be a case confined to the reasonableness of a specific single rate....”); *see also* R1-17(a) (“This [general rate making] rule does not apply

to ... an adjustment or a change of a particular rate or charge....”). On January 1, 2020, the Commission issued its finding that the above-referenced proceeding “constitutes a general rate case,” and has not indicated at any time that Carolina Meadows’ specific rate or structure would be singled out for special determination.

17. These above flaws in the methodology and proceeding have been exacerbated by the fact that Carolina Meadows was never given notice of, or invited to participate in, the discussions about the Stipulation between Public Staff and Aqua, or offered an opportunity to be heard at the public hearings where it could have cross-examined the witnesses upon whose testimony and analysis the Stipulation was based. Indeed, Carolina Meadows was not informed about the Stipulation until after the agreement had already been reached, the Partial Settlement Agreement and Stipulation had been filed,² and the public hearings had concluded. *McLeod Affidavit*, ¶¶3, 15–16.

18. These circumstances were not revealed to Carolina Meadows until July 10, 2020, when Aqua contacted Carolina Meadows as the public hearings in the proceeding were coming to a close. *McLeod Affidavit*, ¶¶3, 15–16. Indeed, the circumstances of the Stipulation were not publicly disclosed at all until July 9, 2020. *See Junis Hr’g. Testimony, Transcr. Vol. 5*, pp.70–75. As a result, Carolina Meadows not only had no opportunity to offer its views when the proposed methodology was discussed, but also was prevented from

² The Stipulation concerning the base facility rate methodology was not actually disclosed in the Partial Settlement Agreement and Stipulation that the parties filed on July 1, 2020. Rather, the parties merely disclosed that they had agreed “that no excess capacity ratemaking adjustment should be made in this rate case related to Aqua’s wastewater treatment plants....” *See* ¶U, p. 9. As already explained, this stipulation regarding excess capacity was related to, and apparently contingent on, the parties’ further stipulation that Aqua would charge Carolina Meadows a base facility rate based on the newly agreed, and flawed methodology.

intervening in this proceeding before the deadline contemplated by the Commission's scheduling order and rules of procedure. *See Scheduling Order (February 14, 2020)*, p.6 (establishing May 19, 2020 deadline to intervene); R1-19(b) (requiring intervention at least ten days before hearing unless "good cause shown").

19. The Commission's rules, and applicable statutes, are replete with notice requirements to ensure that parties like Carolina Meadows have an opportunity to be heard on matters directly and specifically affecting them. *See, e.g.*, N.C.G.S. §§ 62-42, -43; R1-21. Yet, Carolina Meadows received no such opportunity.

20. Based on the above circumstances, Carolina Meadows seeks to intervene in this proceeding. Rule R1-19(a) permits anyone "having an interest in the subject matter of any hearing or investigation pending before the Commission" to become a party to the proceeding, with the requisite "right to call and examine witnesses, cross-examine opposing witnesses, and be heard on all matters relative to the issues involved," proceeding" to "become parties thereto by compliance with Rule R1-19." Rule R1-19.

21. Although this Petition has been filed after the typical deadline, the circumstances in this case—in particular the timing of when the issues came to Carolina Meadows' attention—demonstrate that Carolina Meadows has good cause for an out-of-time Petition. Carolina Meadows is not requesting that the Commission alter any deadlines or delay proceedings in this case, and granting this Petition will not require the Commission to do so. Furthermore, Carolina Meadows does not seek to expand the scope of the proceedings. Instead, Carolina Meadows is asking only that the Commission accepts into the record the attached affidavits and declare void the Stipulation to increase Carolina Meadows' base facility charges.

22. Carolina Meadows alternatively submits this Petition as a complaint, pursuant to Rule R1-9, in which it challenges Aqua's right to increase, and the Commission's authority to approve, Carolina Meadows' base facility charge as set forth in the Stipulation. Aqua's actions and the events in this general rate-making proceeding are in violation of Carolina Meadows' rights, and/or applicable laws and regulations of the Commission, set forth in at least the following:

- a. The Due Process Clause of the United States Constitution;
- b. The Law of the Land Clause in Article I, Section 19 of the North Carolina Constitution;
- c. N.C.G.S. § 62-131
- d. N.C.G.S. § 62-137
- e. N.C.G.S. § 62-139
- f. N.C.G.S. § 62-140
- g. Commission Rule R1-17

23. Because of the flawed methodology used by Aqua and the Public Staff, and the substantial procedural defects in this proceeding, Carolina Meadows now faces a drastic, and unjustified increase to its base facility charge that is inconsistent with generally accepted rate-making principles and does not align with the mission and policies of the Commission.

WHEREFORE, Carolina Meadows respectfully requests that the Commission allow Carolina Meadows to intervene in this proceeding, entering an order as soon as reasonably practicable, and for an order declaring void the Stipulation described in Public Staff Witness Junis' July 9, 2020, hearing testimony. Alternatively, Carolina Meadows asks the Commission to treat this Petition as a customer complaint petition against Aqua's

proposed billing scheme and its unlawful, unjust and discriminatory actions in this proceeding.

This the 14th day of August, 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 August 14, 2020, via the Commission's electronic filing system, as well as via U.S. Mail as follows:

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