

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

April 24, 2020

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

**Via Electronic Delivery**

Re: Aqua North Carolina, Inc.  
Docket No. W-218 Sub 526  
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 Service Areas in  
North Carolina  
Verified Response to Motion to Compel

Dear Ms. Campbell:

Attached please find a Verified Response to Motion to Compel submitted  
for filing by Aqua North Carolina, Inc.

I hereby certify that this filing has been served on the Public Staff; the  
only other current party of record to this proceeding.

As always, we thank you and your staff for your assistance; please feel  
free to contact me if there are questions or if additional information is required.

**Electronically Submitted**

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

c: Party of Record

**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        ) VERIFIED RESPONSE TO  
27511, for Authority to Adjust and Increase        ) MOTION TO COMPEL  
Rates for Water and Sewer Utility Service        )  
in All Its Service Areas in North Carolina        )

**NOW COMES AQUA NORTH CAROLINA, INC.** (“Aqua” or “Company”), by and through the undersigned counsel, and responds to the unverified Motion to Compel, filed and served by the Public Staff (or “Staff”) on April 22, 2020. In support of this Verified Response, Aqua respectfully shows the Commission the following:

**1. GENERAL RESPONSE.**

a) Although it is unfortunate that Aqua and the Public Staff have not been able to fully resolve their discovery difficulties, the current circumstance arises from a fairly traditional pattern: the Public Staff casts a broad net on discovery, searching for information that is either relevant or may lead to relevant information, the pace of the requests/production/exchanges of information accelerates sharply near the end of the discovery period, answers from the Utility beget more questions, the Utility ultimately objects to burden and lack of relevance, the Public Staff’s expansive demands request information the Utility does not have, and in the rush of it all, communication and understanding suffer.

b) In spite of the Commission’s amended procedures requiring that testimony be filed with the Rate Case Application, the crush of discovery

demands---some recently issued that relate to filings (including testimony) made in the December 31, 2019 Application---is at peak, as the Public Staff pushes to prepare to file its testimony by the approaching deadline. Both Aqua and the Public Staff have worked courteously and responsibly, and continue to do so. Aqua notes that no allegations of bad faith or inattention or lack of vigorous, committed efforts at compliance are legitimately any part of this conversation. The Company has not “refused” to provide data. It has in some instances been unable to meet all of the Public Staff’s requests, as the Staff couched them, even after diligent efforts to provide enormous amounts of information. The Company has in some instances not been clear on the exact focus of the data requests. In other instances, as information was exchanged, it was determined that the Public Staff requests needed to be re-cast. And in some instances, the Company has, after concerted efforts to try to comply with the terms of the requests, concluded that: the information was not available; the request itself sought information not germane to the stated purpose of the inquiry; or that the request was unduly burdensome and/or unlikely to lead to any relevant results. On some occasions the Company submits it has provided information that the Public Staff did not realize was available to them. This is an ordinary by-product of the give and take as information is exchanged and better understood; and, for the most part, these issues have been appropriately resolved between the parties.

c) The fact that Aqua intends to not only make its regularly-scheduled WSIC/SSIC surcharge filing, but that it intends to ask for inclusion of meters in that filing, layers review of one request (WSIC/SSIC) into the same timetable as review of another request (inclusion in rate base of the named

projects). The Company is attempting to accelerate production of WSIC/SSIC-specific data responses. However, the WSIC/SSIC filing is not complete (it will be made May 1<sup>st</sup>) and the Company has simply not always been able to comply with the entirety of the Public Staff's rate case production demands on the timetable requested.

d) Aqua regrets that this decision has been migrated to the Commission, and the Company continues without ceasing to provide information sufficient to satisfy the Public Staff's questions and to explain accounting procedures that should be better understood.

## **2. SPECIFIC RESPONSE TO MOTION TO COMPEL.**

a) Aqua respectfully responds to the concerns and allegations raised by the Public Staff's Motion to Compel. In the interest of time, the Company will not address and counterpoint each paragraph of the Public Staff's Motion. Clearly, there is a disagreement or misunderstanding which Aqua seeks to address and remedy by this Verified Response and by continuing provision of data to the Public Staff, as well as by discussions.

In the continued spirit of compromise and transparency, the Company in this Response and with its ongoing production of responses to data requests, will hopefully dispense with the need for determination of the Public Staff's Motion by the Commission. The Company remains committed to proactive discussions with the Public Staff to address the transfer of complex data files with large amounts of data and the essential need to navigate and understand what is being provided in these large files. In addition, the Company remains committed to answering and discussing any

questions or concerns with the Public Staff when interpreting such data. Likewise, the Company will continue to follow up with the Public Staff to understand what the Staff is looking for to the extent the question may be unclear or open to interpretation.

b) Based on Aqua's understanding, the Motion to Compel surrounds two of the Public Staff's discovery requests – Data Requests 54 and 82. Aqua has provided updated information as recently as today to the Public Staff and respectfully submits that both Data Requests have been answered to the best of the Company's ability.

c) Data Request No. 54, Sub-Item 2.h<sup>1</sup>

This Data Request Item concerns the Company's WSIC/SSIC surcharge filing which is to be made on May 1. The Company has been unable to meet the Public Staff's request to provide a Sub-Item 2.h filing, or the data supporting it, prior to its final review and internal management approval of such filing. That said, the Company reports that after further clarification and discussion with Public Staff, it is the Company's belief that what the Staff was specifically looking for in satisfaction of Sub-Item 2.h includes the Company's internal "Engineering Project Closure" forms, contractor estimates of progress and change orders related to the WSIC/SSIC application that will be filed on May 1, 2020. This documentation was provided to the Public Staff today, April 24, 2020. Out

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<sup>1</sup> With today's submission of the information required by Sub-Item 2.h of Public Staff DR No. 54, the Company believes it has now provided all of the information requested by the Staff in each of the nine Sub-Items of that DR.

of an abundance of caution and to make sure there is no miscommunication, the Company will follow up with Public Staff to confirm that this Sub-Item response has been fully satisfied. Additionally, the Company is working diligently to not only prepare the WSIC/SSIC filing, but also to accelerate the provision of any additional, specifically requested data pertaining to it, of the sort that is normally requested by the Public Staff in review of WSIC/SSIC projects.

d) Data Request No. 54, Item 3

It is the Company's understanding that the Public Staff will not need any additional responses to DR No. 54, Item 3 if the Staff is satisfied with the information provided by Aqua in response to DR No. 82.

e) Data Request No. 82

The Public Staff contends that DR No. 82 is necessary for a number of reasons outlined in the Motion to Compel. Those reasons will not be repeated here, and the Company will not address germane issues related to relevance or undue burden.

Aqua has repeatedly attempted to answer this DR Item covering 63,000 assets placed in service since 2015. As recently as the date of the Public Staff's filing of the Motion to Compel, the Company produced additional information in hopes of satisfying this request. A technical issue left blank the date fields for assets placed in service in March 2020. That data, to the extent available, was provided today in an update to the original file. Additionally, the Company today included in its transmittal to the Public

Staff a narrative that includes explanations of the date fields of specific interest to the Public Staff and why some of the information requested is not now, nor has it ever, been available. The Company has provided all information that is or can reasonably be made available. To the extent that any data sought has not been provided, it is because the Company does not have it.

First, as requested by DR No. 82, Aqua has provided the following for each rate entity and each month during the calendar years of 2015, 2016, 2017, 2018, 2019, 2020 (actual through March and budgeted), and 2021 (budgeted):

- List of all capital projects, by category – Provided 04/20/20
- Total cost of the project – Provided on 04/20/20
- Primary plant account (e.g., 320300 – Water Treatment Equipment or 354000 – Structures & Improvements) – Provided 04/20/20
- Date of completion - Provided 04/22/20 and 04/24/20, to the extent available
- Date placed in service - Provided 04/22/20 and 04/24/20, to the extent available
- Date recorded/booked for accounting - Provided 04/20/20
- Activity description (e.g., main/service replacement, Fe/Mn filter, generator, hydro tank replacement, etc.) – Provided 04/20/20
- System name – Provided 04/20/20 and 04/24/20

Secondly, Aqua does not have in-service and completion dates for routine projects. The Company often refers to these projects as “blanket” projects. This is a utility term of art that generally describes unplanned but very routine projects that the utility accomplishes on a regular basis. [For

example, repairing or replacing a section of water pipe to address a main break.] They are not lengthy projects and are generally started and completed in one month. Costs associated with these transactions are recorded and capitalized in the same month via an automated process due to the volume of separate transactions and the requirement that these costs be recorded by system. For these types of projects, Aqua's tracking system does not track the data that the Public Staff is seeking. Aqua has explained this to the Public Staff previously and is requesting additional opportunity to explain how and why the accounting system works as it does, including the extent to which the current system is influenced by regulatory requirements.

### **3. ADDITIONAL PROCEDURAL CONCERNS.**

Finally, and significantly, Aqua is fully prepared to defend against the innuendo [that apparently needs to be confirmed with more discovery data, and/or explanation regarding why additional data is not available] that the Public Staff has asserted in the Motion to Compel. The Company is very concerned with the Public Staff's suggestion of a potential issue of misconduct, in the comments in paragraph 21 at pages 9-10, wherein the Staff gives an example of why it needs certain information. The Public Staff's effort to support the Motion to Compel is transformed into something more serious by this publication, made as a collateral comment in a discovery dispute.

Whether intended or not, comments about a "pattern" of behavior, "inflating rate base," and the legitimacy of the Company's bases for not responding to requests by the Public Staff require review by Aqua's

management and likely other responses. The Company is preparing to go back in time, again, to defend itself and its accounting practices---against either innuendo or allegation. Aqua will not further discuss this issue here, because, if it is an issue, it is best deferred for later articulation in testimony, rebuttal, and at hearing. However, the Company's serious concern about the insinuation from the language used by the Public Staff is that it is unduly prejudicial at this point, and that the mere inclusion of it in a public document by the Staff raises serious other issues of credibility for the Company.

WHEREFORE, Aqua respectfully requests that the Commission direct Aqua and the Public Staff to meet to discuss whether there are in fact any remaining outstanding differences to be resolved by the Motion to Compel, and to report back to the Commission.

Respectfully submitted this the 24th day of April 2020.

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

**Electronically Submitted**

**/s/Jo Anne Sanford**

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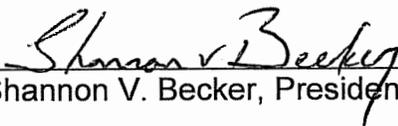
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VERIFICATION

**Shannon V. Becker**, being duly sworn, deposes and says:

That he is the President of Aqua North Carolina, Inc.; that he is familiar with the facts set out in this **VERIFIED RESPONSE TO MOTION TO COMPEL** filed by Aqua North Carolina, Inc. in Docket No. W-218 Sub 526; that he has read the foregoing 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.

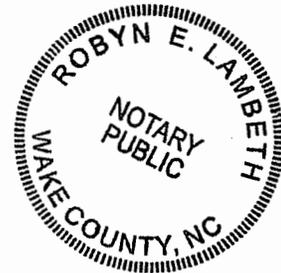
  
Shannon V. Becker, President

NORTH CAROLINA  
COUNTY OF Wake

Sworn to and subscribed before me this  
the 24<sup>th</sup> day of April 2020.

  
Robyn E. Lambeth  
Notary Public

My Commission Expires: May 13, 2021



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing **VERIFIED RESPONSE TO MOTION TO COMPEL**, filed by Aqua North Carolina, Inc. in Docket No. W-218, Sub 526 has been served on the Public Staff, North Carolina Utilities Commission, by hand delivery or electronic transmission to Megan Jost, Staff Attorney.

This the 24th day of April 2020.

**ATTORNEY FOR AQUA NORTH CAROLINA, INC.  
Electronically Submitted**

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