

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH
DOCKET NO. W-218, Sub 363**

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	
Application by Aqua North Carolina, Inc., 202)	ATTORNEY GENERAL'S
MacKenan Court, Cary, North Carolina 27511,)	NOTICE OF APPEAL
for Authority to Increase Rates for Water and)	
Sewer Utility Service in All of Its Service Areas)	
in North Carolina)	

NOW COMES the North Carolina Attorney General (the "Attorney General"), pursuant to N.C. Gen. Stat. § 7A-29(b), § 62-90 et al, and Rule 18 of the North Carolina Rules of Appellate Procedure, and gives Notice of Appeal to the North Carolina Supreme Court from the 2 May 2014 Order Granting Partial Rate Increase, Approving Rate Adjustment Mechanism, and Requiring Customer Notice (the "Order") issued by the North Carolina Utilities Commission (the "Commission") in the above-captioned proceeding. Pursuant to N.C. Gen. Stat. § 62-90(a), the Attorney General identifies the exceptions and the grounds on which he considers the Order to be erroneous, unlawful, unjust, unreasonable, unwarranted and prejudicial.

EXCEPTION NO. 1:

The Commission's approval of Aqua's request to utilize a WSIC/SSIC accelerated rate increase mechanism ("the accelerated mechanism") and the Commission's determination that such mechanism is in the public interest is legally deficient, arbitrary and capricious, based on insufficient findings of fact, lacks support from competent, material, and substantial evidence in light of the

entire record, is premature in light of the state of the record, and is based on reasoning and conclusions that are flawed, unsupported, and inherently inconsistent. Order at pp. 14-16, 68-84, 87.

N.C. Gen. Stat. § 62-133.12 authorizes the Commission to approve an accelerated cost recovery mechanism for a particular water utility to recover costs of eligible water and sewer system improvements, but “only” if the Commission determines, in a rate case for that utility, that the mechanism is “in the public interest.”

Here, the Order approves the accelerated mechanism and determines it is in the public interest when Aqua’s customers are already struggling with high rates. Just and reasonable costs incurred to provide adequate service and water quality are already recoverable in traditional rate cases. Aqua has brought multiple general rate case proceedings in recent years and rates have risen substantially; however, the rate increases actually approved after rate case review were more modest than the increases Aqua initially claimed were needed, showing that appropriate review is needed.¹ The accelerated mechanism will allow Aqua to impose semiannual rate increases on its customers without undergoing a general rate case proceeding for a total increase of up to 5% in annual revenues – about the same percentage that was allowed in prior general rate cases. The accelerated mechanism will increase the frequency of rate

¹ Aqua initially sought a 19.15% increase in annual revenues in this case (\$8,611,429). Application Appendix 1 p 15. Following investigation, Aqua agreed to accept a 5.2% increase (\$2,457,041). Stipulation at 5. Likewise, in the prior general rate case Aqua initially sought a 19.2% increase in annual revenues (\$8,305,012). See Application filed January 21, 2011 *In the Matter of Application for Adjustment of Rates and Charges by Aqua North Carolina, Inc. for all its North Carolina Systems* at 3. Following investigation, the Commission allowed a much reduced overall rate increase of \$2,272,770. (See Notice of Decision and Order issued September 13, 2011, at 18.

increases, shorten the time for review and oversight that typically takes place in a standard rate case, and reduce the opportunities for public input. In short, the accelerated mechanism has disadvantages on its face and while the new law authorizes utilization of the mechanism on a case-by-case basis the law also requires the Commission to specifically determine that utilization of the mechanism benefits the public in the particular matter at hand.

Among other things, the Order's approval and determination that the accelerated mechanism is in the public interest for Aqua is erroneous in that:

The Order determines that the mechanism would incentivize Aqua to improve water quality even though the Commission already has the ability to require Aqua to provide clean, drinkable water and take appropriate, corrective action with respect to water quality under authority contained in provisions such as N.C. Gen. Stat. § 62-42(a) (as recognized by the Order's decision to require Aqua and the Public Staff to file reports in the future identifying water quality concerns, along with recommendations as to whether the Commission should order Aqua to pursue "corrective action"), and a monopoly public water utility has an inherent duty under the law to provide water to its consumers of appropriate quality at a reasonable price.

The Order determines that the mechanism is in the public interest without determining with specificity what the benefits are to the public and if the benefits to the public outweigh disadvantages to the public.

The Order determines that the mechanism is in the public interest on the purported grounds that Aqua's consumers indicated a desire for improved water

quality, while not giving weight to the fact that Aqua's customers objected almost unanimously to any rate increase. Similarly, the Order determines that Aqua's consumers will supposedly benefit by receiving rate increases sooner so as to "smooth out" anticipated rate increases, even though Aqua's customers have already been hit with multiple rate cases in recent years and informed the Commission that they did not want rate increases sooner.

The Order determines that the mechanism is in the public interest even though the benefit to Aqua and its shareholders is concrete (i.e., accelerated recovery of costs) while the supposed benefit to the public (i.e., increased water quality) is not concrete or guaranteed. Similarly, the Order determines that the mechanism is in the public interest based on speculation; the Order specifically denied a request that the Commission conduct or order a study examining the effect and benefits of such mechanisms on consumers in states where similar mechanisms are already in place and determined that the mechanism is in the public interest without the benefit of the information that would have been obtained had that study been conducted. Similarly, the Order denied a request that the Commission order a focused management audit to better understand how Aqua is currently making its investment decisions to address water quality issues and determine why prior rate increases and investment decisions have not resulted in acceptable water quality and determined that the mechanism is in the public interest without the benefit of the information that would have been obtained had that audit been conducted.

The Order determines that the mechanism is in the public interest even though the Commission lacked sufficient information regarding Aqua's 3-year "plan" for water improvements, noted that Aqua's plan for water improvements was deemed to be materially insufficient by the Public Staff at the time of the hearing, and noted that more detailed descriptions of improvement projects would need to be provided later. Similarly, the Order determines that the mechanism is in the public interest and would incentivize Aqua to improve water quality even though the Order also speculates that it may be difficult and costly to totally eradicate the problem. At the same time, the Order does not provide any specific information regarding projected costs to fix the problems or a specific timeframe for fixing the problems, other than a vague direction to Aqua and the Public Staff to work together and later recommend appropriate solutions to eradicate water quality issues "to the extent practicable."

The Order determines that the mechanism would incentivize Aqua to improve water quality even though Aqua's management testified that it already intended to continue to invest extensively in projects designed to address and improve water quality (T2, p. 23).

The Order determines that the mechanism is in the public interest and is needed to improve water quality, even though the mechanism is overbroad for such purposes (in that, among other things, it allows for recovery of sewer costs that are not related to water quality) and is not defined in a manner so as to compel needed water quality improvements. Along those lines, the evidence of water quality problems do not relate to Aqua's rate divisions that provide sewer

service: Aqua Sewer and Fairways Sewer.² None of the accelerated rate increases under the mechanism that are applied to sewer customers would be used to address water quality problems. Rather the charge resulting from the mechanism that applied to sewer rates would fund sewer projects. Similarly, although the Order's determination is based on water quality concerns, such problems do not pertain to those water systems that rely on water supplied by third parties. "Purchased water customers" in 65 of Aqua Water's and 19 of Brookwood's service areas are distributed water that is supplied by other providers, and the rates are different: the usage charges are based on the rates charged by the supplier of purchased water. Nonetheless, the Order authorizes accelerated rate increases under the mechanisms for purchased water customers without distinction. There is not sufficient evidence or reasoning to support the creation of the mechanism for such customers.

The Order determines that the mechanism is in the public interest even though the Commission's rulemaking docket (initiated by Aqua and the Public Staff) designed to establish the overall procedures for implementing such mechanisms was pending and incomplete, with no final rules issued or approved, at the time the Commission's Order was issued.

The Order determines, inconsistently and without sufficient basis, that the mechanism will result in saved costs for consumers on the purported grounds that Aqua can recover the costs of pursuing its rate cases from consumers and the mechanism will eliminate the costs associated with a rate case, while also

² Aqua is divided into five rate divisions: Aqua Water, Aqua Sewer, Fairways Water, Fairways Sewer, and Brookwood Water.

concluding that the costs Aqua recovers via the accelerated mechanism will still be reviewable in future rate cases.

Accordingly, the Commission's Order is arbitrary and capricious, is affected by errors of law, is unsupported by competent, material, and substantial evidence in light of the entire record, and is beyond the Commission's statutory power and jurisdiction.

Respectfully submitted, this the 2nd day of July, 2014.

ROY COOPER
Attorney General

/s/ Kevin Anderson
Kevin Anderson
Senior Deputy Attorney General
N.C. Department of Justice
P.O. Box 629
Raleigh, NC 27602
(919) 716-6006
kander@ncdoj.gov

/s/ Phillip K. Woods
Phillip K. Woods
Special Deputy Attorney General
N.C. Department of Justice
P.O. Box 629
Raleigh, NC 27602
(919) 716-6052
pwoods@ncdoj.gov

/s/ Margaret A. Force
Margaret A. Force
Assistant Attorney General
N.C. Department of Justice
P.O. Box 629
Raleigh, NC 27602
(919) 716-6053
pforce@ncdoj.gov

CERTIFICATE OF SERVICE

The undersigned certifies that she has served a copy of the foregoing ATTORNEY GENERAL'S NOTICE OF APPEAL upon the parties of record in this proceeding and their attorneys by electronic mail or by U.S. mail.

This the 2nd day of July, 2014.

/s/ Margaret A. Force
Margaret A. Force
Assistant Attorney General