

**OFFICIAL COPY**

1048 Keswick Ln.  
Clemmons, NC 27012  
March 31, 2011

Mr. Robert Gruber  
Executive Director, Public Staff  
4326 Mail Service Center  
Raleigh, NC 27699-4326

**FILED**

**APR 01 2011**

Clerk's Office  
N.C. Utilities Commission



Dear Mr. Gruber:

Aqua North Carolina, Inc.  
Docket No. W-218, Sub 319

In accordance with instructions contained in the "Notice to Customers" in re the above noted Docket, enclosed in triplicate is a "Statement of Opposition" to the proposed increase in water and sewer rates filed by Aqua North Carolina, Inc on January 21, 2011.

The Statement of Opposition presents what we believe is substantive information that we wish you to consider pursuant to the Public Staff's review and investigative duties and responsibilities as set forth in G.S. 62-15(d).

Since, as individuals, our resources are quite limited relative to those of the applicant, we specifically request that you give serious consideration to the employment of expert witnesses and such other professional expertise you consider necessary as you consider our concerns, and their application to the case at hand. As you no doubt know, authority for doing so is provided in G.S. 62-15(h).

Our Statement of Opposition presents the views of the residents of Salem Glen Subdivision. It is our intention to appear at the April 6, 2011 Winston-Salem Hearing to testify on this matter. Authorization to present the views of the residents of Salem Glen is contained in a petition to that effect that will be submitted at the Hearing.

In addition to the street address noted above, other contact points are, telephone: 336-712-8014, and email: [pwminges@yahoo.com](mailto:pwminges@yahoo.com).

We thank you for your consideration.

Yours sincerely,

  
Peter W. Minges

Enclosure –  
As above

Cc: North Carolina Utilities Commission  
Honorable Roy Cooper, NC Attorney General

**AQUA NORTH CAROLINA, INC.  
DOCKET NO. W-218, SUB 319**

**PREFILED STATEMENT OF OPPOSITION OF PETER W. MINGES  
ON BEHALF OF HIMSELF AND HIS FELLOW RESIDENTS  
IN SALEM GLEN SUBDIVISION**

**MARCH 30, 2011**

**A. Introduction**

**FILED**  
**APR 01 2011**  
Clerk's Office  
N.C. Utilities Commission

1 **Q. Please state your name, address and present position.**

2 A. My name is Peter W. Minges. My address is 1048 Keswick Lane,  
3 Clemmons, NC 27012. I am retired.

4 **Q. Please summarize your educational and professional background.**

5 A. I am a graduate of Ohio State University with a Bachelor of Science  
6 degree in Accounting. Until assuming "inactive" status following my  
7 decision to shift my career focus to private business, I was a  
8 Certified Public Accountant and member of the Ohio Society of CPAs  
9 and the American Institute of CPAs. Approximately two-thirds of my  
10 career were devoted to the practice of public accounting. The remaining  
11 one-third involved the creation, strategic planning, ownership, and  
12 management of several incorporated businesses engaged in the wholesale  
13 and retail distribution fields.

14 **Q. Was this Statement of Opposition prepared by you?**

15 A. Yes.

16 **Q. Have you ever represented others before a government agency?**

17 A. I have represented numerous public and private corporations, partnerships,  
18 sole proprietorships and individuals in proceedings before the Internal  
19 Revenue Service, plus state and local income and property tax agencies.

**B. PURPOSE OF OPPOSITION**

1  
2 **Q. What is the purpose of your opposition?**

3 A. The purpose of these comments is to make known our opposition to Aqua North  
4 Carolina's (hereafter, "Aqua") request for rate increase. Our reasons address four  
5 areas of concern involve water and sewer rate determinations, while the remaining  
6 issue involves primarily sewer. The first is the comparative magnitude of Aqua's  
7 cost rate base and operating revenue deductions, both as distilled to the level of  
8 cost per-customer. The second area of concern is the Public Staff's apparent  
9 reliance upon General Statutes (G.S.) 62-133 as the sole statute for rate making, in  
10 apparent disregard of guidance both judicial and statutory. The third relates to the  
11 inappropriate use of Goodwill in Aqua's cost rate base together with its long term  
12 effects. The fourth area of concern is the presence of excess capacity within  
13 Aqua's systems and therefore its cost rate base, while the final area of concern  
14 addresses the metering of sewer costs as mere symptomatic relief. A conclusion  
15 focuses on the NCUC and Public Staff roles relevant to our views.

16 **Q. How is the remainder of your statement organized?**

17 A. My statement is organized as follows:

18 Section C. Summary

19 Section D. Utilities' Costs Per-Customer, a Reasonable Analytical Tool

20 Section E. G.S. 62-2 Influence Upon G.S. 62-133, and "Reasonable"

21 Section F. Goodwill, Cost Rate Base, and Acquisition Incentive Account

22 Section G. Excess Capacity

23 Section H. Metering of Sewer Costs

24 Section I. Conclusion

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**Q. Do you have any supporting documentation?**

**A. Yes. Exhibits documenting facts supporting the views expressed herein are attached. See “Index to Exhibits” following Page 37 and footnote references.**

**C. Summary**

Aqua North Carolina’s (hereafter, Aqua) regulatory presence in North Carolina contains a dichotomous riddle: “Aqua is at once tremendously efficient yet horribly inefficient”.

The extensive discussion in this statement clarifies the reasons why Aqua’s utility operations are “tremendously efficient” while simultaneously being “horribly inefficient”.

In sum, the Aqua paradox reveals two conflicting demands. On the one hand, Aqua’s parent company (and therefore, Aqua) pursues a business strategy that demands growth fueled by acquisitions and a continuing stream of rate increases over time. In this, Aqua has been tremendously efficient.

On the other hand, unfortunately for Aqua’s customers, Aqua’s costs of attaining its business strategies have driven its rates to materially disparate levels, earning it the factually descriptive characterization, horribly inefficient.

1 The paradox that is Aqua can be effectively addressed and resolved by the North  
2 Carolina Utilities Commission (hereafter, NCUC), with the able accounting, legal,  
3 and engineer skills of the Public Staff. Resolution of the paradox requires that  
4 both agencies responsibly venture beyond their established ways of viewing and  
5 applying the rate making process.

6  
7 There is abundant statutory comment and judicial opinion upon which they can  
8 rely to carefully consider the reasonableness of Aqua's utility costs when viewed  
9 on a per-customer cost basis. Doing so is a process that is easy to do. Doing so  
10 is, indeed, a requirement given the inextricably logical per-customer relationship  
11 between a utility's General Statutes (hereafter "G.S.") 62-133 costs and the rates  
12 so determined per-customer.

13  
14 NC statutory policies and clarifying NC Supreme Court opinions make clear that  
15 a utility's services must be adequate and its rates reasonable. In the final analysis,  
16 policies designed to attain adequacy of services and reasonableness of rates exist  
17 for the same reason the NCUC exists, to serve the interests of all NC citizens and  
18 residents. Inasmuch as Aqua's costs, as distilled to the per-customer level, are  
19 now materially higher than established norms within its industry, the weight of  
20 justice leans heavily in the direction of the using and consuming public.

21  
22 Several other complementing concerns are addressed that bear on the principle  
23 theme of this statement, including the ill-advised presence of goodwill in Aqua's  
24 rate base, the potential of a significant amount of excess capacity in utility assets

1 by reason of the depression in new residential development, and the potential of  
2 viewing newly designed metered sewer rates as a cure. We respectfully ask that  
3 our views be given productive consideration by both the Public Staff in its vital  
4 service to the using and consuming public, and the NCUC in its decisive role.

5  
6 **D. Utilities' Costs Per-Customer**

7 **Q. Why is a Utility's Costs Per-Customer Important?**

8 A. The attached analysis<sup>1</sup> of flat rate monthly sewer orders issued by the NCUC  
9 pursuant to G.S. 62-133 documents all known flat rate sewer orders issued from  
10 January 1, 2009 through February 28, 2011. A summary of its findings reveals a  
11 material disparity between Aqua's current and proposed new flat rate monthly  
12 sewer rates and the average of rates approved for (1) all utilities other than Aqua's  
13 "all service areas" and (2) NC subsidiaries of Utilities, Inc. (a multi-state water  
14 and sewer utility comparable to Aqua America).

Categories of NCUC Flat Monthly Rate Orders From January 1, 2009 Through February 28, 2011	Flat Monthly Rates	Aqua's Current Percentage Premium	Aqua's New % Premium
Average of all orders except Aqua's "all service areas" order	\$40.34	57.0%	78.7%
Average of all orders issued to NC subsidiaries of Utilities, Inc.	\$37.80	67.6%	90.8%
Aqua's current "all service areas" <sup>2</sup>	\$63.33	0.0%	13.9%
Aqua's proposed new flat rate <sup>3</sup>	\$72.11	N/A	0.0%

15  
16 It goes without saying that compared to industry norms in the 26 months ended  
17 February 28, 2011, represented by a total of 12 other NCUC orders<sup>4</sup>, Aqua's

<sup>1</sup> Exhibit A

<sup>2</sup> W-218, Sub 274

<sup>3</sup> W-218, Sub 319

<sup>4</sup> Exhibit A

1 current and proposed new “all service areas” flat monthly rate levels raise serious  
2 questions about Aqua’s relative performance of “economical” services and its  
3 managerial attention to “efficiency”, as those terms are used in G.S. Chapter 62.  
4 (Please see Section E for G.S. 62 discussion.)  
5

6 Inasmuch as utility rates are levied upon and paid by each customer, and since  
7 G.S. 62-133 inextricably links those rates to the cost rate base and operating costs  
8 of a utility, it is logical to assess the utility’s costs on a per-customer basis, in  
9 addition to determining the accounting appropriateness of their aggregate dollars.  
10 This can be easily done because, as a key component in the rate design process, a  
11 utility’s customer count is readily available for use as the divisor.  
12

13 Throughout American industry financial accounting managers and their cost  
14 accounting brethren develop per-unit cost accounting information as measures  
15 from which their own performance can be evaluated against that of others and/or  
16 industry standards and benchmarks. If many thousands of other businesses can do  
17 it, surely utilities can do it, as can the Public Staff in its representative capacity on  
18 behalf of the using and consuming public. Doing so is important in evaluating the  
19 fairness and reasonableness of a utility’s resulting rates.  
20

21 **Q. Is it reasonable and appropriate that utilities’ costs per-customer be**  
22 **considered in the rate making process?**

23 **A. Yes. A review of G.S. 62-133 reveals an inherent yet incontrovertible logic: That**  
24 **in order for a utility to have its rates increased, it must first have increased its per-**

1 customer rate base costs and/or annual operating costs (assuming a relatively  
2 constant or declining rate of return from one test period to another). That is, in  
3 the absence of a material increase in a utility's rate of return on debt and equity,  
4 the way a utility can assure rate increases is to manage its affairs in a way that  
5 will increase its per-customer cost rate base and/or its per-customer operating  
6 revenue deductions.

7  
8 Since a utility's final rates determined under G.S. 62 are billed to and paid by  
9 each customer, there is a direct correlation between a utility's costs incurred per-  
10 customer and the rates it is ordered to charge per-customer. Once again assuming  
11 no material change in allowable rate of return, if it is held that a utility's rates are  
12 "reasonable", then it must also be true that its costs per-customer are reasonable.  
13 Conversely, if a utility's costs per-customer are not reasonable, then that utility's  
14 rates determined pursuant to G.S. 62-133 cannot logically be reasonable for the  
15 simple reason that the two determined values are inextricably related, one to the  
16 other.

17  
18 The NCUC and Public Staff must be constantly aware of the opportunity  
19 presented by G.S. 62-133 for a utility to purposefully manage its cost structure to  
20 higher and higher levels per-customer thereby producing a steady flow of rate  
21 increases over time. Thus, it is entirely reasonable and appropriate that, in the  
22 rate making process, a utility's costs on a per-customer basis be determined, and  
23 the reasons for changes thereto be thoroughly understood.

24

1 **Q. Are Aqua's sewer costs on a per-customer basis excessively high?**

2 **A. Yes.** Aqua's total sewer cost rate base and operating revenue deductions  
3 (inclusive of Windsor Oaks, Fairways, and Beau Rivage) determined in its  
4 preceding NCUC rate case<sup>5</sup> appear in the schedule below together with the same  
5 cost categories accumulated for North Carolina subsidiaries of Utilities, Inc.<sup>6</sup>  
6 Both Utilities, Inc. (headquartered in Chicago, Ill) and Aqua America (parent of  
7 Aqua NC) are large, resourceful, experienced and skilled professionals in the  
8 water and sewer utility business. The two test period analyses below represent the  
9 results of two periods of rate cases (2007/08 and 2009/10) involving essentially  
10 the same individual utility companies. The disparity in their comparative costs on  
11 a per-customer basis is remarkable because it is material and remains relatively  
12 constant over both rate making periods. The first schedule covers NCUC rate  
13 cases spanning the 2007 – 2008 period of time.

14

Key Factors – 2007/08 Rate Cases	Utilities, Inc	Aqua NC	% Diff.
No. of Sewer Customers	19,250	13,091	(32.0%)
Cost Rate Base (CRB)	\$20,172,301	\$19,557,743	(3.0%)
<b>CRB Per-Customer</b>	<b>\$1,047</b>	<b>\$1,494</b>	<b>42.6%</b>
Operating Rev Deducts (ORD)	\$8,257,379	\$8,371,521	1.4%
<b>ORD Per-Customer</b>	<b>\$429</b>	<b>\$639</b>	<b>49.1%</b>

15  
16 A detailed accumulation<sup>7</sup> of the above scheduled data reflects 2007-2008 separate  
17 rate determinations of nine Utilities, Inc. operations made by the NCUC and  
18 Public Staff. Aqua's data was accumulated from separate rate determinations for

<sup>5</sup> Docket: W-218, Sub 274

<sup>6</sup> Dockets: W-354, Sub 314; W-778, Sub 81; W-1151, Sub 5; W-1152, Sub 6; W-1013, Sub 7

<sup>7</sup> Exhibit B

1 three of Aqua’s operations<sup>8</sup>. Since both companies operate dozens of waste water  
 2 treatment facilities, wide variations in an individual facility’s costs – both capital  
 3 and operating – can be expected to be “smoothed” as between the two large  
 4 companies, adding substance to the conclusion that a comparison of the two  
 5 companies’ per-customer costs structures is a viable analytical tool for the Public  
 6 Staff to use.

7  
 8 Although Aqua’s 2007–2008 customer count was 32% lower than the Utilities,  
 9 Inc. customer count, Aqua’s aggregate cost rate base was only 3% lower than  
 10 Utilities, Inc.’s, while Aqua’s aggregate operating revenue deductions actually  
 11 exceeded those of Utilities, Inc by 1.4%. In both types of critical cost categories  
 12 (cost rate base and operating revenue deductions), Aqua’s costs per-customer are  
 13 materially higher than Utilities, Inc’s operations. As can be seen, one company is  
 14 operated economically and efficiently, the other is not.

15  
 16 Similar data has been developed for the recent and current round of rate cases<sup>9</sup>  
 17 involving essentially the same utility operations as the 2007/08 cases, as follows:

Key Factors – 2009/10 Rate Cases	Utilities, Inc	Aqua NC	% Diff.
# Customers	20,521	15,232	(25.8%)
Cost Rate Base (CRB)	\$25,942,739	\$28,677,559	10.5%
<b>CRB Per-Customer</b>	<b>\$1,264</b>	<b>\$1,883</b>	<b>48.9%</b>
Operating Rev Deducts (ORD)	\$9,130,231	\$9,562,896	4.7%
<b>ORD Per-Customer</b>	<b>\$445</b>	<b>\$628</b>	<b>41.1%</b>

18  
<sup>8</sup> Exhibit B; see also Docket W-218, Sub 274

<sup>9</sup> Exhibit B; see also Utilities, Inc Dockets: W-1013, Sub 9; W-354, Sub 324; W-354, Subs 325 & 327; W-778, Sub 88; also Aqua Docket: W-218, Sub 319

1 Even though Aqua's current customer count is 25.8% lower than that of Utilities,  
2 Inc., Aqua's aggregate dollars cost rate base are now 10.5% higher and operating  
3 revenue deductions now actually exceed Utilities, Inc's by 4.7%.<sup>10</sup> From Aqua's  
4 2007/08 rate case to its current case, Aqua's customer count increased by 16.4%,  
5 but its cost rate base increased 26%, indicating a mismanaged increase in cost rate  
6 base investment. To its credit, Aqua's per-customer operating revenue deductions  
7 declined, but by a mere 1.7%, which is obviously not enough to counter the  
8 effects of its excessive growth in per-customer cost rate base.

9  
10 From its 2007-2008 case to the present, Aqua's performance measured by the  
11 terms "economical" and "efficiency" has not improved. Since Aqua's per-  
12 customer rate base and operating costs are materially higher than the norms within  
13 its industry, if it were operating in a competitive free market environment Aqua  
14 would either have to bring its costs under control, or it simply could not compete.

15  
16 In sum, Aqua's historical and current business priorities, driven by "growth-by-  
17 acquisition" followed by the pursuit of rate increases, leave no room for the  
18 economical management of its costs on a per-customer basis. Aqua's resulting  
19 mismanagement is a major concern, a type of concern receiving specific attention  
20 of prior Utilities Commissioners. In 1974, the Supreme Court<sup>11</sup> approvingly  
21 quoted a certain Utilities Commission conclusion, in pertinent part, as follows:

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<sup>10</sup> While the comparison in the 2009-2010 period involves essentially the same entities as were assessed for the 2007-2008 period, one Utilities, Inc entity's 2009-2010 data (Docket W-778, Sub 88) was developed from its currently active rate application. Similarly, Aqua's 2009-2010 data represents Aqua's official submission (Docket W-218, Sub 319), also currently under active Public Staff review.

<sup>11</sup> Utilities Commission v. General Telephone Co. of Southeast, 285 N.C. 671, 679 (1974)

1                    *“We conclude that if all prerequisites were present, a substantially higher*  
2                    *rate of return should and would be allowed, but that in view of the*  
3                    *inefficient and inadequate service, unreasonable levels of investment*  
4                    *and expense, and unsound management, no increase in rates should be*  
5                    *allowed herein.* [Italics as use by the Court.” Underscore added}  
6

7                    While the ruling refers to a rate of return concern, its principles are universal and  
8                    therefore valid here. When an inefficient utility mismanages its cost structure to  
9                    unreasonable heights, “no increase in rates should be allowed”.

10  
11                    **Q. Do you have an explanation of why Aqua’s cost structure is excessively high?**

12                    Yes. Management shortcomings are intangible, often difficult to determine  
13                    without thorough investigation. Since it is impossible to read the minds of other  
14                    people, and in the absence of inside information, absolute proof is not readily  
15                    available to outsiders such as the using and consuming public. However, an old  
16                    adage contains a truism: “Actions speak louder than words”.

17  
18                    The documented results herein of the overriding business strategies of Aqua  
19                    America, Inc. (hereafter, “Aqua America”) reflect management’s actions  
20                    spanning years. Its strategies can be easily gleaned from its long-time Chairman  
21                    and Chief Executive Officer’s remarks in the company’s annual reports,  
22                    summarized as follows (source of quotes<sup>12</sup>):

- 23                    (1) “industry-leading growth-through-acquisition strategy”,  
24                    (2) followed by investment of record amounts “in infrastructure improvements”,  
25                    (3) which allow for “rate awards” that “increase annualized revenues”.

26  

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<sup>12</sup> Exhibit C: Chairman and President’s Shareholder Letter dated March 1, 2011.

1 Mr. DeBenedictis' words report, and are therefore reflective of, Aqua's actions, as  
2 confirmed by documented results<sup>13</sup> of Aqua's NC operations. Aqua's overriding  
3 business strategies relevant to rate payers are (1) aggressive growth-through-  
4 acquisition and the earning of frequent rate increases, referred to in parent  
5 company reports as "awards". A little known or understood subtlety enters the  
6 equation here; in order for Aqua America's Chief Executive Officer to annually  
7 trumpet to shareholders the company's success in obtaining "rate awards", Aqua  
8 America and its utility subsidiaries must, of necessity, manage utility costs in  
9 ways that will increase per-customer costs.

10  
11 Actions speak louder than words. The proof is in the actual results obtained, year-  
12 after-year-after-year, and the results reveal cost management that ignores a need  
13 to effectively control G.S. 62-133 costs on a per-customer basis.

14  
15 The source power for Mr. DeBenedictis' strategies, decisions, actions, and  
16 documented results resides in the inherent logic of G.S. 62-133.<sup>14</sup> In light of  
17 Aqua's materially higher costs per-customer versus industry norms, and resulting  
18 higher water and sewer rates, it is incumbent upon the NCUC and Public Staff to  
19 very carefully and thoroughly review and investigate the management decision  
20 making process that produces Aqua's excessive per-customer cost structure. We  
21 respectfully request that you do so.

22  
23 **Q. Why is Aqua America's business strategy relevant to Aqua's NC rate case?**

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<sup>13</sup> Herein, Discussion and Schedules, Pages 8 – 10.

<sup>14</sup> Herein, Discussion, Bottom of Pg. 6 through Pg. 7 Line 16.

1 The NC Secretary of State's corporation files report that Aqua is a "current-  
2 active" North Carolina corporation<sup>15</sup>. It is a wholly-owned subsidiary of Aqua  
3 America. G.S. 62-3(23)c provides as follows:

4 "The term "public utility" shall include all persons affiliated through stock  
5 ownership with a public utility doing business in this State as parent  
6 corporation or subsidiary corporation as defined in G.S. 55-2 to such an  
7 extent that the Commission shall find that such affiliation has an effect on  
8 the rates or service of such public utility." [Emphasis added]  
9

10 It is appropriate to consider the nature of the affiliation between Aqua America  
11 and Aqua. According to current information on file with the NC Secretary of  
12 State<sup>16</sup>, the officers of Aqua are Nicholas DeBenedictis (Chairman of the Board),  
13 Thomas Roberts (President), and Roy H. Stahl (Vice President). According to  
14 Aqua's annual reports filed with the NCUC for calendar years 2005 through 2009,  
15 Mr. Stahl appears as Aqua's Secretary. Robert Rubin appears as Assistant  
16 Treasurer of Aqua, while D.M Kelly first appeared as Treasurer of Aqua in its  
17 2009 NCUC annual report.

18  
19 Except for Mr. Roberts, Messrs. DeBenedictis, Stahl, Rubin, and Ms. Kelly are all  
20 senior executive officers of Aqua America. Thus, it is reasonable to conclude that  
21 Aqua is under the firm management control of Aqua America. It is also  
22 reasonable to conclude that Aqua America's business strategies, and management  
23 planning imposed by Aqua America's senior executives, have a substantial effect  
24 upon the business practices, acquisitive growth, rate base investment and

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<sup>15</sup> Exhibit D

<sup>16</sup> Exhibit D

1 operating costs of Aqua, all of which have an effect on Aqua's rates, whether  
2 sewer or water.

3  
4 To summarize this section, Aqua is a firmly controlled subsidiary of Aqua  
5 America. There is no denying that Aqua's current and proposed rates, assessed  
6 and paid on a customer level, are materially higher than industry norms. By  
7 reason of the incontrovertible logic of G.S. 62-133, Aqua's rate base and  
8 operating costs as refined to the per-customer level are also materially higher than  
9 industry norms. For reasons expanded upon in Section E following, it is entirely  
10 logical and therefore reasonable for the Public Staff and NCUC to consider as  
11 evidence a utility's costs on a per-customer basis. The fact that Aqua's rates and  
12 costs are materially higher than industry norms, combined with clearly stated  
13 corporate-wide strategies and actions, suggests a purposeful effort by  
14 management to manage its costs higher, rather than efficiently managing them  
15 lower. The conclusions of a prior NC Utilities Commission, as confirmed by the  
16 NC Supreme Court, reveal precedential recognition of the need to deny rate  
17 increases when a utility's management is, itself, the cause of unreasonable costs.

18  
19 **Section E. G.S. 62-2 Influence Upon G.S. 62-133**

- 20 **Q. Is there a concern that the NCUC and Public Staff may place too much**  
21 **reliance upon the G.S. 62-133 formula for fixing rates?**
- 22 A. Yes. In a recently concluded NCUC case involving flat rate monthly sewer rates,  
23 the following statement appears that apparently represents Public Staff policy,  
24 perhaps also NCUC policy:

1                    “It is inappropriate to compare CWS’s rates with other utilities,  
2                    municipalities or county systems. The Public Staff provides  
3                    recommendations to the Commission based on each utility’s individual  
4                    books and records.”<sup>17</sup>  
5

6                    On March 9, 2011, inquiry was made of Mr. William Grantmyre, Public Staff  
7                    attorney, as to the legal basis for the Public Staff quote. Mr. Grantmyre replied  
8                    via telephone message machine that “we follow G.S. 62-133” noting that other  
9                    utilities’ rates are “not really one of the rate making components”. To that limited  
10                    extent we agree that other utilities’ rates are not one of the rate making  
11                    components. However, his response did not address the comment that Public  
12                    Staff’s recommendations are based on each utility’s individual books and records,  
13                    nor did he make any reference to other provisions in G.S. 62 or related judicial  
14                    determinations. Two follow up calls to Mr. Grantmyre seeking to discuss the  
15                    additional considerations were not returned.  
16

17                    **Q.    Does Chapter 62 require the NCUC and Public Staff to look solely to G.S. 62-**  
18                    **133 for the fixing of rates? If not, why not?**

19                    **A.    No. Neither I nor any of my Salem Glen neighbors who have studied the matter**  
20                    **are attorneys. Nevertheless, words have meaning, and the plain written language**  
21                    **of the statute, together with a noteworthy NC Supreme Court case, certainly**  
22                    **appear directly relevant to these questions.**  
23

24                    This discussion will proceed via three interrelated avenues of inquiry. First is an  
25                    analysis of G.S. 62-133, and whether or not it requires the Public Staff and NCUC  
26                    to look only to G.S. 62-133 in determining whether a utility’s rates are “fair” and

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<sup>17</sup> Docket No. W-354, Sub 324, Testimony Dated November 19, 2010, Pg 10, Lines 11-14

1 “reasonable”. That will be followed by relevant judicial comment, and finally an  
2 analysis of the policies and terms set forth and used, respectively, in G.S. 62-2.

3  
4 (1) G.S. 62-133

5 The terms “fair” and “reasonable” appear frequently in various articles and  
6 sections of Chapter 62. G.S. 62-133(a) opens with the statement that “the  
7 Commission shall fix such rates as shall be fair both to the public utilities and to  
8 the customer”. More relevant to Aqua’s materially high relative per-customer  
9 cost structure are the requirements of G.S. 62-133(b) requiring the Commission to  
10 “ascertain the reasonable original cost of the public utility’s property” and  
11 “ascertain such public utility’s reasonable operating expenses”.<sup>18</sup> [Emphasis  
12 added]

13  
14 Under the current Public Staff review process, its focus on the reasonableness of  
15 costs appears to be limited to gaining assurance that a utility’s aggregate costs –  
16 be they capital in nature or current period expense – are accumulated in  
17 accordance with established accounting procedures and methods, properly  
18 classified among relevant accounting categories, and applied equitably to relevant  
19 time periods. From a review of various Public Staff reports contained in NCUC  
20 docket files, it is evident from their many adjustments and pro forma entries that  
21 the Public Staff performs this type of corporate level analysis in a competent  
22 manner. At the corporate level, however, the Public Staff review activity appears  
23 to stop when the aggregate dollars spent by a utility have been determined to

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<sup>18</sup> G.S. 62-133(b)(1) and (3) respectively.

1 properly (1) match revenues and expenses, (2) account for aggregate dollars  
2 properly entering the utility's cost rate base used and useful, and (3) account for  
3 aggregate dollars charged to expenses. Once those determinations have been  
4 made, the utility's aggregate cost dollars in each principle category (cost rate base  
5 and operating revenue deductions) are deemed "reasonable".  
6

7 The Public Staff review function just described is a corporate level consideration,  
8 as opposed to a customer level consideration. Corporate level work by the Public  
9 Staff is a vital and necessary exercise in determining whether or not the aggregate  
10 dollars incurred by a utility have been reasonably accounted for.  
11

12 So far so good ... as far as it goes.  
13

14 However, the process so described inadequately addresses the problems created  
15 by an aberrant utility whose cost structure on a per-customer basis is materially  
16 different – whether far higher or far lower - from that of its industry norms. Since  
17 a utility's rates are levied upon each customer, the only way to determine whether  
18 or not an aberrant utility's aggregate cost dollars are "reasonable" is to review  
19 them on the same basis, the costs incurred per-customer.  
20

21 Thus, the following question must be addressed, the answers analyzed and  
22 explained: Why is this utility's per-customer cost structure so materially different  
23 from its peers in the industry?  
24

1 The answers to this question can be expected to serve well the application of the  
2 terms “fair”, “reasonable”, “economical”, and “efficiency””, as those terms are  
3 used not only in G.S. 62-133 but also G.S. 62-2.

4  
5 There is nothing in G.S. 62-133 that precludes the use of per-customer  
6 distillations of “original cost ... of property” or “operating expenses” in  
7 determining reasonable rates. Nothing. In order to determine what is reasonable  
8 requires context, useful context. Perhaps that’s one reason why G.S. 62-133(d)  
9 opens the door wide when it broadens the “books and records” scope of G.S. 62-  
10 133(a) - (c) by requiring that “[T]he Commission shall consider all other material  
11 facts of record that will enable it to determine what are reasonable and just rates.”

12 [Emphasis added]

13  
14 Over the two rate case periods studied in Section D above, Aqua’s per-customer  
15 cost structure has ranged from 41% to 49% higher than the other comparable  
16 large national company’s NC operations. A disparity of that magnitude is a  
17 material fact. While other utilities’ rates are not, in and of themselves, a rate  
18 making component, rates ordered for other companies are most assuredly a result  
19 of those companies’ per-customer cost structures. Given the fact that Aqua’s  
20 existing and proposed rates range from 57% to 90% higher than its peers, there is  
21 no question that Aqua’s per-customer cost structure is materially aberrant when  
22 compared to the norms produced by its industry peers. It is self evident that when  
23 one utility’s per-customer rate base and per-customer operating costs are

1 materially higher than its industry norms, they are material facts for the record in  
2 determining “what are reasonable and just rates”.

3  
4 The remainder of this Section’s discussion will address judicial and statutory  
5 commentary on the flaws inherent in a myopic view that G.S. 62-133 is to be  
6 applied solely by reference to a utility’s books and records.

7  
8 (2) Judicial Commentary

9 In looking beyond the provisions of G.S. 62-133, G.S. 62-2 provides policy  
10 guidance to which all G.S. 62 provisions are subject. With respect to that policy,  
11 the NC Supreme Court provided valuable insight in *Utilities Commission v.*  
12 *General Telephone Co. of Southeast*<sup>19</sup>:

13 “The primary purpose of Chapter 62 of the General Statutes is not to  
14 guarantee to the stockholders of a public utility constant growth in the  
15 value of and in the dividend yield from their investment, but is to assure  
16 the public of adequate service at a reasonable charge. It became evident  
17 long ago that the attainment of this primary objective is endangered both  
18 by unrestrained competition and by the creation of a “complacent  
19 monopoly” in the public utility business. Consequently, Chapter 62  
20 provides for the granting of a monopoly and for the regulation of its  
21 service and its charges by the Utilities Commission. The entire chapter is  
22 a single, integrated plan. Its several provisions must be construed together  
23 so as to accomplish its primary purposes. Its provisions, such as G.S. 62-  
24 133, designed to assure the utility of adequate revenues, are in the nature  
25 of corollaries to the basic proposition that the public is entitled to adequate  
26 service at reasonable rates and safeguards against administrative action  
27 which would violate constitutional protections by confiscation of the  
28 utility’s property.” [Emphasis added]  
29

30 The first sentence of the Court’s comments emphasizes the importance of  
31 adequate service at a “reasonable” charge. Webster’s New World College

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<sup>19</sup> 285 N.C. 671, 680

1 Dictionary defines “adequate” to mean “enough or good enough for what is  
2 required or needed; acceptable but not remarkable”. No-where is it said that a  
3 utility’s service should be “Cadillac”, “BMW”, or “Mercedes” in nature.  
4 Adherence to the statutory standard of “adequate” does not require “remarkable”  
5 or “materially higher” levels of costs per-customer.

6  
7 (3) G.S. 62-2

8 G.S. 62-2, titled “Declaration of policy”, contains language that can only be  
9 satisfied by the Public Staff and NCUC looking beyond the “books and records”  
10 of a utility. For example, G.S. 62-2(a)(3) provides the legislative policy “[T]o  
11 promote adequate, reliable and economical utility service to all of the citizens and  
12 residents of the State” [emphasis added], not just the residents fortunate enough  
13 not to have Aqua as their service provider. To determine whether a utility is  
14 “economical” necessarily requires a comparison of that company’s operating data  
15 to evidence from outside the books and records, including norms within its  
16 industry.

17  
18 Words have meaning, and when used within context they convey messages. The  
19 Supreme Court citation above<sup>20</sup> twice uses the term “reasonable” within the  
20 context of customers’ economic burden. G.S. 62-2(a)(3) uses the term  
21 “economical”, also within the context of customers’ economic burden, thereby  
22 associating the term “reasonable” with “economical” utility service. The words  
23 “reasonable” and “economical” therefore have a definitional context that binds

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<sup>20</sup> 285 N.C. 671, 680

1 them to the financial interests of utility customers, a functional context directly  
2 related to the inextricable relationship of a utility's per-customer costs to the per-  
3 customer levying of charges.

4  
5 Having noted that words have meaning, Webster's New World College  
6 Dictionary defines "reasonable" to mean:

7 "4a) not extreme, immoderate or excessive b) not expensive"

8  
9 In application, the terms "extreme", "immoderate" and "excessive" clearly  
10 describe the results of Aqua's "expensive" style of cost management. Aqua's  
11 costs as determined on a per-customer basis do not, therefore, meet the plain  
12 English test of "reasonable" costs as required by G.S. 62-2 and 62-133. Since the  
13 costs are unreasonable, they must be made reasonable in order for Aqua to be  
14 "awarded" a rate increase now, or in the future for that matter. Indeed, there is  
15 ample reason to be thinking in terms of a rate decrease at this time.

16  
17 In sum, in accordance with its duties and responsibilities to the using and  
18 consuming public as set forth in G.S. 62-15(d), it is respectfully requested that the  
19 Public Staff look beyond Aqua's "books and records" by extending its review and  
20 investigation to include, as material facts of record, Aqua's materially higher base  
21 rate costs per-customer and operating costs per-customer relative to those of other  
22 utilities, together with the reasons therefore.

1 **F. Goodwill, Cost Rate Base, & Acquisition Incentive Account**

2 **Q. What is the background surrounding the issue of goodwill?**

3 **A. The following statement appears in the 2004 Form 10K Aqua America, Inc. filed**  
4 **with the Securities Exchange Commission:**

5 “Pursuant to our strategy to grow through acquisitions, on June 1, 2004,  
6 we acquired the capital stock of Heater Utilities, Inc. for [\$48 million] in  
7 cash and the assumption of long-term debt of [\$19.218 million] and short-  
8 term debt of [\$8.5 million]”<sup>21</sup>.  
9

10 Aqua America’s statement continued, explaining that:

11 “The acquisition was accounted for as a purchase and accordingly, we  
12 recorded goodwill of [\$18.842 million].” [Emphasis added]  
13

14 Aqua America’s Chief Executive Officer and Chief Financial Officer both signed  
15 the Form 10K under the onerous penalties contained in the Sarbanes-Oxley  
16 Act enacted by the U.S. Congress following several major corporate failures.  
17 Therefore, if Aqua America stated that the \$18.842 million item was goodwill,  
18 that’s exactly what it was.  
19

20 Aqua America’s 2004 Form 10K continues its Heater acquisition explanation with  
21 a reference to the NCUC role in the acquisition, saying:

22 “In 2004, as part of the North Carolina Utilities Commission approval  
23 process for this acquisition, the Commission approved a mechanism  
24 through which we could recover up to two-thirds of the goodwill through  
25 customer rates in the future upon achieving certain objectives. We intend  
26 to pursue these objectives to facilitate recognition of this premium in  
27 customer rates.” [Emphasis added]  
28

---

<sup>21</sup> Aqua America, Inc. 2004 SEC Form 10K, Pg 144, Management Discussion and Analysis Pg 12, Acquisitions.

1 NCUC's approval of the "mechanism"<sup>22</sup> was part of, and perhaps a contingency  
2 to be satisfied prior to, Aqua America's acquisition of Heater. In the "Joint  
3 Application For Approval of the Acquisition", the seller and Aqua America  
4 stated:

5 "Closing on the proposed transaction is scheduled to occur at a  
6 mutually agreed upon date not later than ten business days after the  
7 satisfaction of the conditions precedent set forth in the Stock Purchase  
8 Agreement, including the receipt of all required regulatory approvals"<sup>23</sup>.  
9

10 One wonders: Was regulatory approval of the "mechanism" a required "condition  
11 precedent" in the Agreement? Unfortunately, the using and consuming public  
12 public is not permitted to know. The Stock Purchase Agreement has been given  
13 "Confidential" status in the NCUC docket file. In the absence of transparency,  
14 the using and consuming public is left to wonder if the NCUC effectively  
15 granted a significant economic incentive for Aqua America to acquire Heater. If  
16 so, there is reason to question the judgment of the NCUC effectively forcing Aqua  
17 customers to underwrite Aqua America's already well known aggressive growth-  
18 by-acquisition strategy.

19  
20 In response to the "Joint Application For Approval of the Acquisition", the  
21 NCUC issued a favorable Order in accordance with a joint stipulation filed by the  
22 Public Staff and Aqua following a process that was conducted "without an  
23 evidentiary hearing"<sup>24</sup>. The Order chose not to use the phraseology "two-thirds of  
24 the goodwill" as was used by Aqua America in its 2004 SEC Form 10K quoted

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<sup>22</sup> Docket: W-218, Sub 465

<sup>23</sup> Docket No. W-274, Sub 465, Joint Application, Item 10.

<sup>24</sup> Docket No. W-274, Sub 465, Order Approving Joint Stipulation

1 above, but instead euphemistically uses the phraseology “two-thirds of the  
2 Acquisition Premium”.

3  
4 In explaining how the newly labeled “Acquisition Premium” is to become the  
5 “mechanism” noted by Aqua America in its 2004 SEC Form 10K, NCUC stated  
6 that it ...

7 “... will be converted to rate base in connection with the acquisition and  
8 upgrade of nonviable systems in North Carolina as described below.”  
9

10 NCUC’s explanation then states that Heater (soon to be owned by Aqua America)  
11 will be pursuing the acquisition of nonviable systems as identified by the NCUC,  
12 NC’s Department of Environment and Natural Resources (DENR) or the Public  
13 Staff. Nonviable systems are described in the Order to be “systems whose  
14 current owner(s) do not have the financial, technical, or managerial capacity to  
15 provide adequate service”.

16  
17 The “mechanism” devised for the conversion of goodwill to rate base was to  
18 create a new account called “Acquisition Incentive Account” (hereafter, AIA) into  
19 which was placed \$12.2 million of the goodwill. When Aqua is notified of a  
20 nonviable system by NCUC, DENR or the Public Staff, Aqua will then actively  
21 pursue its acquisition. Subject to certain limitations on the AIA amounts available  
22 in any given nonviable acquisition, and upon prior consultation with the Public  
23 Staff, a portion of the goodwill residing in the AIA is then released for use in  
24 Aqua’s cost rate base.  
25

1 Paragraph “h” on page three of the Order<sup>25</sup> states, in pertinent part, the following:

2 “... the Public Staff and Aqua agree that the benefits and costs to Heater  
3 of the stock transfer ... may be at issue in future proceedings. The Public  
4 Staff and Aqua further agree that either party may assert any position on  
5 rate making or other regulatory issues with regard to these benefits and  
6 costs and that the Commission retains the right to take whatever action it  
7 deems necessary to protect the interests of Heater’s customers in future  
8 proceedings.”  
9

10 Since paragraph “h” gives the NCUC the right to change its mind “in future  
11 proceedings” in order to “protect the interests of Heater’s customers”, and in light  
12 of Aqua’s materially higher per-customer costs and resulting materially higher  
13 rates that have developed since the 2004 Heater acquisition, and since it is clear  
14 that the interests of Heater’s customers (now Aqua’s) certainly do need  
15 protection, it is respectfully requested that the Public Staff and NCUC seriously  
16 consider taking its action at this time.

17  
18 One final background item for consideration in this case: The “Joint Application  
19 For Approval of the “Acquisition” was filed January 30, 2004. It provided an  
20 overview, a description of the applicants, a summary of the proposed transaction,  
21 the impact on service, rates and local communities, and the applicants’ opinion  
22 about the benefits of the proposed transaction. Paragraph 12 of the Application  
23 reads as follows:

24 “The proposed transaction will have no immediate impact on the rates  
25 charged customers of the Regulated Water Companies. The rates, rules,  
26 regulations and terms and conditions of service in effect on the date of  
27 of closing will not change as a result of the acquisition.”[Emphasis added]  
28

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<sup>25</sup>Docket No. W-274, Sub 465, Order Approving Joint Stipulation

1 The NCUC issued its approval Order on May 26, 2004, and closing of the  
2 transaction promptly followed on June 1, 2004. Something else also occurred on  
3 June 1, 2004. Now under the control of Aqua America, Heater Utilities submitted  
4 to the NCUC a “Notice of Intention to File a General Rate Increase Application”,  
5 dated and filed June 1, 2004, the date Aqua closed on its Heater acquisition.<sup>26</sup>  
6

7 In summary, Aqua America has, for years, taken great pride in its “aggressive  
8 growth-through-acquisition strategy” and success in being “awarded” frequent  
9 rate increases. In 2004, and in accord with its clearly stated strategy, the company  
10 pursued the acquisition of Heater, an acquisition that would firmly establish Aqua  
11 America as a major water and wastewater operator in the State. At the company’s  
12 request, in order to incentivize Aqua America to conclude the acquisition of  
13 Heater and to make future acquisitions of nonviable systems, the NCUC granted a  
14 significant economic benefit to Aqua America - the inclusion of goodwill to its  
15 cost rate base - notwithstanding sound accounting and regulatory accounting  
16 principles to the contrary. In its current application for rate increase, a gross  
17 amount of approximately \$2 million of the original \$12.2 million of goodwill has  
18 been so converted as of July 31, 2010.  
19

20 **Q. Is it appropriate to include goodwill in a utility’s cost rate base.**

21 **A. No. A utility system is made up of clearly defined properties used and useful, net**  
22 **of defined liabilities and credits, that are reasonably required to adequately**

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<sup>26</sup> Docket: W-274, Sub 478

1           conduct a utility business. Whether purchased or otherwise, goodwill is not a  
2           clearly defined asset used and useful in a utility business.

3  
4           The Heater acquisition produced \$18.842 million of purchased goodwill.  
5           Purchased goodwill is the excess of the purchase price of an acquired business  
6           over the fair value of its net tangible and identifiable intangible assets. The  
7           purchased goodwill was created at the time of the purchase transaction. It has no  
8           identifiable relationship to any of the utility’s acquired utility assets. Rather, it is  
9           merely an intangible representing the buyer’s willingness, perhaps eagerness, to  
10          pay an amount over and above the fair value of the acquired utility’s operating  
11          utility assets. Since it paid more than the “fair value” of Heater’s utility system  
12          assets, that fact suggests that Aqua America was strongly motivated to pursue its  
13          “aggressive growth-by-acquisition strategy” irrespective of whether it paid more  
14          than Heater’s utility system assets were worth. For that reason, Aqua America’s  
15          own behavior serves to divorce the goodwill from rate base, not to mention the  
16          fundamental accounting and economic reasons why goodwill has no business in  
17          a utility’s rate base.

18  
19          Given Aqua America’s 2004 decision to pay far more than the fair value of  
20          Heater’s utility system assets, there is a strong implication that much if not all of  
21          the \$18.842 million excess purchase price was paid to serve a non-utility  
22          corporate purpose unrelated to the interests of the using and consuming public  
23          who became Aqua customers through no choice of their own. That corporate

1 purpose was to further Aqua America's aggressive growth-by-acquisition  
2 strategy, a strategy with no direct relationship to utility assets used and useful.

3  
4 It is respectfully requested that the Public Staff recommend and the NCUC  
5 approve the elimination of any and all rate making effects of the original goodwill  
6 in this and Aqua's future rate increase efforts by returning the original balance in  
7 the AIA to its rightful place on Aqua's balance sheet, the Goodwill Account.

8  
9 **Q. Are there any other effects of the conversion of goodwill to rate base that**  
10 **you believe require consideration?**

11 **A. Yes. There is a long term, and quite subtle, ramification inherent in the**  
12 **"mechanism" that flows goodwill dollars into Aqua's rate base. G.S. 62-133**  
13 **permits a utility to earn a percentage return on its cost rate base. That return**  
14 **flows directly to a utility's bottom line net income after all expenses. It increases**  
15 **a utility's cash flow accordingly. As such, the extra cash is readily available to**  
16 **the utility for use in the utility's business.**

17  
18 According to Aqua's 2009 annual report filed with the NCUC, approximately  
19 80% of the company's 2009 operating cash flow was invested in purchases of  
20 utility property; that is, rate base. Thus, to the extent Aqua's cash flow is  
21 increased via the rate of return calculation as applied to the goodwill, that portion  
22 of its cash flow provided by the inappropriate inclusion of goodwill in Aqua's rate  
23 base is being used to further increase Aqua's rate base.

24

1 As one thinks about this, it can be seen that so long as Aqua continues to invest its  
2 cash flow arising from the NCUC's decision to inappropriately convert  
3 goodwill into rate base, the compounding effects of the AIA "mechanism" are, in  
4 effect, a "gift that keeps on giving", to the detriment of Aqua's rate payers.

5  
6 Additionally, it can be expected that a portion of Aqua's cash flow arising from  
7 the "mechanism" will also be used to increase operating expenses. Under the rate  
8 making system of G.S. 62-133, to the extent operating expenses grow because of  
9 goodwill driven cash flow the amount of allowable gross revenues (that must be  
10 paid by Aqua's customers) will also grow. Yes, the mechanism is certainly a "gift  
11 that keeps on giving", in more ways than one.

12  
13 **Q. Are there any additional aspects of concern with the Acquisition Incentive**  
14 **Account?**

15 **A. Yes. There are two concerns that are best expressed by the use of rhetorical**  
16 **questions?**

17  
18 (1) Why in the world is the State of North Carolina providing financial  
19 acquisition incentives to Aqua America and Aqua, whose entire corporate  
20 financial and management strategy and culture are focused on "aggressive  
21 growth-by-acquisition"?

22  
23 (2) Is it "fair", "reasonable", and/or morally right as well, that a fraction of 1% of  
24 North Carolinians are being assessed utility rates inflated by a highly questionable

1 use of goodwill in order to satisfy an otherwise meritorious nonviable systems  
2 public policy, which public policy benefits 9.5 million North Carolinians?

3  
4 **G. Excess Capacity**

5 **Q. Are you aware of the existence of excess capacity in any of Aqua's sewer**  
6 **systems?**

7 **A. Yes. Attached is a recent letter dated June 23, 2010 written by Mr. Thomas J. '**  
8 **Roberts, President and Chief Operating Officer of Aqua in response to a**  
9 **complaint about insufficient capacity at the Country Woods East waste water**  
10 **treatment plant<sup>27</sup>. Mr. Roberts wrote:**

11 "The current available treatment capacity for the Country Woods East  
12 WWTP is 510,000 gallons per day (gpd). In May 2010, the average flow  
13 at the WWTP was approximately 177,000 gpd. As you can see, we do not  
14 have a capacity issue."  
15

16 While Mr. Roberts provides assurance to Country Woods East customers that they  
17 need not worry about the WWTP's capacity, he simultaneously confirms that  
18 there is approximately 65% excess capacity at that facility, an excess  
19 inappropriate to include in Aqua's rate base.

20  
21 We note that Aqua's WWTP serving the Salem Glen Subdivision where my  
22 neighbors and I live is another example of an apparently underused WWTP.  
23 According to the EPA's National Pollutant Discharge Elimination (NPDES)  
24 system, the design capacity of the WWTP is 200,000 gpd.<sup>28</sup> As a result of the  
25 severe economic conditions that have stopped home building in this

---

<sup>27</sup> Exhibit E, Pg. 2, Item #3

<sup>28</sup> Exhibit F

1 approximately 15 year old subdivision, over 40% of the home sites for which the  
2 WWTP was constructed are yet to be built. In light of deteriorating new home  
3 construction economic conditions, the subdivision developer ceased development  
4 activities in the subdivision three years ago. It is understood that he is cautiously  
5 considering plans for further development if, as, and when the economy and  
6 residential real estate market improve. There can be no assurance as to when that  
7 will happen. Thus, Salem Glen's potential WWTP excess capacity carries with it  
8 little current prospects for use.

9  
10 We understand that of the 570 total potential home sites spanning three  
11 subdivisions served by Aqua's WWTP, 330 presently have homes on them with  
12 the remaining 240 vacant.<sup>29</sup> Thus, there is a potential excess capacity adjustment  
13 here as a direct result of the adverse new home real estate market over the past 3-4  
14 years.

15  
16 The purpose of this discussion is to explore one potentially significant reason  
17 (among others already discussed) why Aqua's rate base on a per-customer basis is  
18 materially higher than that of the Utilities, Inc's NC subsidiaries. Aqua has been  
19 aggressively acquiring and adding to its plant, whereas the Utilities, Inc activities  
20 in that regard have been much more modest.

21  
22 Construction of Salem Glen began in or around 1996. The first homes were sold  
23 in 1998. Development and new home sales progressed normally until 2007, when

---

<sup>29</sup> Exhibit G, Salem Glen Marketing Agent Data, Pg. 2, Items 3, 4, and 5.

1 sales of new homes began to slow. By early 2008, builders with new homes in  
2 Salem Glen were struggling, as was the developer. The developer ceased all  
3 activity. There was, and has been to date, virtually no new home construction  
4 other than that of several homes built for buyers with the financial wherewithal to  
5 commit prior to commencement of construction.

6  
7 Salem Glen is not an isolated situation. Its story over the past 3-4 years has  
8 played out in untold numbers across NC. It is therefore reasonable to expect that  
9 Aqua's aggressive acquisition strategy has left it with an inherent excess capacity  
10 in their water and waste water facilities by reason of the extremely poor market  
11 conditions.

12

13 **Q. Does the excess capacity issue you have identified affect the scope of review**  
14 **and investigative work of the Public Staff and decisions of NCUC?**

15 Yes. Auditors of financial statements do not typically examine every transaction  
16 in a company's books and records. Rather, auditors employ testing procedures to  
17 determine how well a company's accounting system captures, accounts for and  
18 classifies its transactions, and therefore the reliability of a company's final  
19 financial statements and data. The nature and extent of the Public Staff's  
20 accounting, auditing and engineering review and investigatory functions is not  
21 known to the public, but it is doubtful that they normally perform a 100%  
22 selection process and an in depth review of every facility's capacity  
23 circumstances.

24

1 In light of Aqua’s excessively high per-customer cost rate base and operating  
2 expenses, and with full awareness of the potential excess capacity conditions  
3 arising from the recent, and continuing, adverse economic conditions in the  
4 residential real estate development markets, it is a reasonable management  
5 decision for the Public Staff to extend its review and investigation of excess water  
6 and waste water systems’ capacities. Under the circumstances, it is respectfully  
7 requested that a 100% review and investigation be conducted of all subdivisions  
8 serviced by Aqua whose initial development began in the past 20 years, and that a  
9 similar 100% review be made with respect to all older systems that have been  
10 directly or indirectly acquired and/or upgraded by Aqua within the past 10 years.

11  
12 **H. Metering of Sewer Costs**

13 **Q. Why are you commenting about the metering of sewer costs?**

14 **A.** In Aqua’s prior “all service areas” rate case<sup>30</sup> many customers of Aqua reacted  
15 adversely to the proposed excessive increase in flat rate monthly sewer charges.  
16 Of those who wrote and/or spoke at public hearings, there was one overriding  
17 message. Simply put, the requested rate increase was too high and made no sense  
18 in the then existing difficult economic times. Two subthemes within their  
19 overriding message were vocalized, as follows:

20 **A.** Aqua’s proposed rates were viewed as much higher than those of  
21 other water and waste water utilities, whether publicly or privately owned.  
22

23 **B.** Small households of one or two persons complained that it is unfair  
24 and unreasonable that they must subsidize households who place greater  
25 demands upon the waste water systems.  
26

---

<sup>30</sup> W-218, Sub 274

1 The core reason so many people complained during Aqua's last rate case was  
2 their awareness of Aqua's materially higher rates. They then advanced two  
3 arguments they hoped would channel their complaints in directions they believed  
4 might bear fruit, (1) comparable rates of other utilities and (2) small households  
5 subsidizing larger households' usage.

6  
7 That is, their advanced arguments were associated with symptoms of the  
8 underlying disease (that being Aqua's excessive rates) in the hopes that someone  
9 would be moved to provide a sedative, of sorts, to ease their pain.

10

11 During a December conversation at Public Staff offices with Mr. William  
12 Grantmyre, a Public Staff attorney, he explained that he has been assigned to the  
13 current Aqua rate case to devise a system that will respond to the subsidization  
14 complaints of the latter group, those of small households and low demand. The  
15 comments below are directed to Mr. Grantmyre's assignment, not the caliber or  
16 quality of his work effort.

17

18 **Q. Why do you view Aqua's rates as an "underlying disease"?**

19 A. Please kindly refer to the discussion and conclusions in Section D. above. In sum,  
20 Aqua's rates are excessively high because its rates are inextricably tied to Aqua's  
21 excessive rate base and operating expenses, both on a per-customer basis. Its  
22 costs per-customer are too high because Aqua America's and Aqua's senior  
23 management firmly believe it's in their interests to continually increase their costs  
24 on a per-customer basis. Until such time as Aqua chooses, or is forced, to change

1 its business model such that its costs per-customer are managed significantly  
2 downward relative to the rest of the industry, Aqua's past serves as prologue for  
3 the future; their rates will continue to rise.

4  
5 We believe there is merit in the principle of metering waste treatment rates so that  
6 those who deploy more waste pay their relative share of the required revenues.

7 However, do not be deluded in the belief that Aqua's underlying cost  
8 management disease will be cured by simply redesigning sewer rates. Aqua's  
9 disease will remain, with the result that in the not-too-distant future the rates  
10 being paid by the small household will increase to levels approximating those  
11 immediately preceding the metered rate change. Using a dental metaphor, two  
12 aspirin will not solve the problem of a diseased tooth requiring a root canal job.

13  
14 It is respectfully requested of both the Public Staff and the NCUC that while  
15 designing a more rational rate system to replace the flat rate monthly sewer  
16 system with one that minimizes, if not avoids, subsidization of heavy sewer users,  
17 you do not lose sight of, or worse ignore, the core disease itself, that being Aqua's  
18 inability or unwillingness to materially reduce its rate base and operating costs  
19 per-customer.

## 20 21 **I. Conclusion**

22 Beginning with the ill-advised plan to convert \$12.2 million of Aqua's self-  
23 motivated creation of goodwill to rate base and the resulting perception of Aqua  
24 as NC's "favored child" in the water and waste water utility industry, Aqua's two-

1 pronged strategy of aggressive growth-by-acquisition and frequent rate increases  
2 has bred a condition far removed from the policies and “spirit” of G. S. Chapter  
3 62. In the process, the credibility of the NCUC and Public Staff are being  
4 questioned both from within the using and consuming public and interested NC  
5 citizens in general.

6  
7 It is understandable that over time a comfort zone may well have developed on  
8 the fifth floor of the Dobbs Building under which established ways of doing  
9 things may have become narrowed and calcified, leaving little room for the  
10 creativity necessary to respond to new challenges presented by consolidation  
11 within the water and waste water industry. In light of the absolutely  
12 monopolistic nature of this particular industry, a paramount challenge is to  
13 effectively regulate a utility’s cost structure such that all utilities manage their net  
14 rate-affecting costs with the express goal of effectively controlling costs on a per-  
15 customer basis, not increasing per-customer costs in order to later be “awarded”  
16 rate increases.

17  
18 Both G.S. 62-2 and the NC Supreme Court provide ample support for NCUC and  
19 Public Staff to reject narrow minded calcification in favor of cost accounting and  
20 engineering methods and techniques designed to encourage utilities toward  
21 efficiencies “which decrease utility bills”. Does that idea and quoted clause  
22 sound familiar”? It should; it’s precisely what G.S. 62-2(3a) says.

23

1 If the 2004 NC Utilities Commission believed it had within its power a legal basis  
2 to convert goodwill to rate base for the purpose of incentivizing the “aggressive  
3 growth-by-acquisition” Aqua America to acquire, the current NCUC certainly has  
4 a much stronger legal basis to incentivize Aqua’s shift from a utility intent on  
5 increasing its per-customer cost structure to one that works hard – either willingly  
6 or by NCUC order – to materially reduce its costs per-customer.

7

8 We, the residents of Salem Glen, have put much time, effort, and sincerity into  
9 this document. We look forward with great interest to a healthy and positive rate  
10 making response from the Public Staff and NCUC that embraces the full power,  
11 policies and spirit of G.S. 62. If so accomplished, NCUC will simultaneously  
12 serve another important legislative policy: “To encourage and promote harmony  
13 between public utilities, their users and the environment”<sup>31</sup>.

14

\* \* \* \* \*

15

16

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18

19

20

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<sup>31</sup> G.S. 62-2(a)(5)

**AQUA NORTH CAROLINA, INC.  
DOCKET NO. W-218, SUB 319**

**PREFILED STATEMENT OF OPPOSITION OF PETER W. MINGES  
ON BEHALF OF HIMSELF AND HIS FELLOW RESIDENTS  
IN SALEM GLEN SUBDIVISION**

**MARCH 30, 2011**

**INDEX TO EXHIBITS**

<u>Exhibit Description</u>	<u>Exhibit Reference</u>
Details supporting known NCUC sewer flat rate cases ordered from January 1, 2009 through February 28, 2011	A
Comparison of Aqua and Utilities, Inc subsidiaries sewer rate cases from January 1, 2009 through February 28, 2011	B
Aqua America Inc's Chairman and President's letter to shareholders dated March 1, 2011	C
Aqua North Carolina, Inc's current Annual Report information appearing in NC Department of State records	D
Aqua letter written by Thomas J. Roberts, President and Chief Executive Officer dated June 23, 2010	E
Abbreviated copy of NPDES report showing flow capacity of "Salem Glen Subdivision WWTP"	F
Salem Glen Marketing Agent data, via email exchange	G

**DETAILS SUPPORTING KNOWN NCUC SEWER FLAT RATE CASES ORDERED - 1/01/09 THROUGH 2/28/11**  
 (Data Source: NCUC Docket Files)

**EXHIBIT A**

<u>Utility Company</u>	<u>Parent Co.</u>	<u>Docket #</u>	<u>Order Date</u>	<u>Flat Rates Per Month</u>		
				<u>G.S. 62-133</u>	<u>G.S. 62-133.1</u>	
<u>Carolina Water Service, Inc. of NC</u> In re service - all areas in NC	Utilities, Inc.	W-354 Sub 314	1/09/09	\$41.68		
<u>CWS Systems</u> Fairfield Mtn, Highland, Laurel Mtn Fairfield Sapphire Fairfield Harbor	Utilities, Inc.	W-778 Sub 81	1/16/09 1/16/09 1/16/09	40.98 26.39 29.48		
<u>Transylvania Utilities</u> Connestee Falls Subdivision (SUB 12 Included both Flat Rate and Metered)	Utilities, Inc.	W-1012 Sub 12	1/15/10	48.10		
<u>Bradfield Farms Water Co.</u>	Utilities, Inc.	W-1044 Sub 15	9/29/10			21.97
<u>Carolina Water Service, Inc. of NC</u> Incl Carolina Pines & Nero, Previously Separate	Utilities, Inc.	W-354 Sub 324	2/10/11	40.14		
<b>Subtotal - Utilities, Inc. Subsidiaries</b>						<u>\$226.77</u>
<b>AVERAGE OF ALL UTILITIES, INC. ORDERS - 2009 TO 2/28/11</b>				<b>\$37.80</b>		
<u>Aqua North Carolina, Inc. (Excludes "all service areas" order - see below)</u> Fairways & Beau Rivage Windsor Oaks	Aqua America	W-218 Sub 274	4/08/09 4/08/09	33.15 41.65		
<u>Etowah Sewer Company</u>	N/A	W-933 Sub 7	8/03/09			26.26
<u>Rock Creek Environmental Co.</u>	N/A	W-830 Sub 3	9/16/09	34.05		
<u>A&amp;D Water Service</u> Rates cover all service areas High Vista Sapphire Sherwood	N/A	W-1049 Sub 13	10/28/09 10/28/09 10/28/09			37.74 44.01 37.41
<u>Fearrington Utilities</u>	N/A	W-661 Sub 6	12/22/09			23.14
<u>Conleys Creek Ltd Partnership</u>	N/A	W-1120 Sub 5	1/28/10	26.50		
<u>Sandler Utilities @ Mill Run, LLC</u>	N/A	W-1130 Sub 6	5/10/10			40.70
<u>Blue Creek Utilities, Inc.</u>	N/A	W-857 Sub 6	7/15/10	77.00		
<u>Scientific Water &amp; Sewerage - Onslow Cty</u>	N/A	W-176 Sub 37	2/23/11			30.74
<u>Pine Island - Currituck, LLC</u>	N/A	W-1072 Sub 12	12/20/10	45.00		
<b>Flat Rate Totals - Excluding Aqua "All Service Areas" Below</b>						<u>\$484.12</u>
<b>AVERAGE - ALL ORDERS EXCEPT AQUA BELOW</b>						<u>\$40.34</u>
<b>POINT OF COMPARISON - 2009 ORDER NOT INCLUDED ABOVE</b>						
<b>Aqua North Carolina, Inc</b>	<b>Aqua America</b>	<b>W-218 Sub 274</b>	<b>4/08/09</b>	<b>\$63.33</b>		<b>Aqua NC Rate Increase Filed 1/21/11 \$72.11</b>
<b>AQUA NC - PERCENTAGE HIGHER THAN UTILITIES, INC \$37.80 AVERAGE</b>				<b>97.8%</b>		<b>90.8%</b>
<b>AQUA NC - PERCENTAGE HIGHER THAN ALL OTHERS \$40.24 AVERAGE</b>				<b>97.0%</b>		<b>78.7%</b>

**COMPARISON OF AQUA & UTILITIES, INC. SUBSIDIARIES SEWER RATE CASES - 1-01-09 TO 3/22/11**

**EXHIBIT B**

(Data Source: NCUC Docket Files)

COMPANY/OPERATION NAME	CASE NUMBER	ORDER DATE	TEST PERIOD	TOTAL DOLLARS OF			END OF PERIOD CUSTO-MERS	PER CUSTOMER DATA		
				COST RATE BASE	NEW GROSS REVENUE	OPER REVENUE DEDUCTS		COST RATE BASE	OPER GROSS REVENUE	OPER DEDUCTS
<b>UTILITIES, INC (UCI) SUBSIDIARIES - 2007 &amp; 2008 TEST PERIODS</b>										
Carolina Trace Utilities, Inc	W-1013 SUB 7	12/19/08	2007	\$4,499,316	\$1,035,849	\$659,697	1,436			
Carolina Water Service, Inc. of NC	W-354 SUB 314	1/09/09	2007							
Applies to all areas except three				11,218,709	6,650,506	5,712,622	12,853			
Corolla & Monterey				1,018,878	475,823	390,645	878			
Currituck										
Nags Head				1,057,393	413,084	324,686	618			
CWS Systems, Inc	W-778 SUB 81	1/16/09	2007							
Applies to all areas except below										
Treasure Cove et al										
Forest Hills subdivision				150,554	135,169	122,582	449			
Fairfield, Highland, Laurel				516,795	304,206	261,000	779			
Fairfield, Sapphire Valley				1,429,147	671,868	552,389	1,762			
Fairfield Harbor										
Carolina Pines	W-1151 SUB 5	7/25/09	09/30/08	167,200	177,692	165,416	346			
Nero Utility Services	W-1152 SUB 6	10/02/09	09/30/08	105,649	75,091	68,342	129			
<b>UIC - 2007 &amp; 2008 TOTALS &amp; PER-CUSTOMER DATA</b>				<b>20,163,641</b>	<b>9,939,288</b>	<b>8,257,379</b>	<b>19,250</b>	<b>\$1,047</b>	<b>\$516</b>	<b>\$429</b>
<b>UTILITIES, INC (UCI) SUBSIDIARIES - 2009 &amp; 2010 TEST PERIODS</b>										
Carolina Trace Utilities, Inc	W-1013 SUB 9	11/24/10	09/30/09	4,628,756	1,190,843	805,939	1,493			
Update to 4/10										
Carolina Water Service, Inc. of NC	W-354 SUB 324	2/10/11	2009							
Applies to all areas except three				12,370,599	6,945,404	5,906,274	13,959			
Nags Head				1,718,261	631,892	487,558	667			
Carolla & Monterey	W-354 SUB 325/327	3/22/11	2009	5,619,601	1,285,595	809,405	893			
CWS Systems, Inc	W-778 SUB 88	Incomplete	06/30/10							
Applies to all areas except below										
Treasure Cove et al										
Forest Hills subdivision										
Fairfield, Highland, Laurel				157,068	303,908	278,783	876			
Fairfield, Sapphire Valley				263,596	303,154	269,829	814			
Fairfield Harbor				1,184,858	878,738	572,443	1,819			
<b>UIC - 2009 &amp; 2010 TOTALS &amp; PER-CUSTOMER DATA</b>				<b>25,942,739</b>	<b>11,339,534</b>	<b>9,130,231</b>	<b>20,521</b>	<b>\$1,284</b>	<b>\$553</b>	<b>\$445</b>
<b>UIC'S 2009/10 PERCENT CHANGE FROM UIC'S 2007/08</b>								<b>20.7%</b>	<b>7.0%</b>	<b>3.7%</b>
<b>POINT OF COMPARISON - AQUA DOCKET W-218 SUB 274 - A 2007/2008 PERIOD RATE CASE</b>										
Aqua North Carolina	W-218 SUB 274	4/8/2009	2007							
All service areas, except below				17,563,638	8,997,694	7,577,674	10,801			
Updated Thru Mid 2008										
Windsor Oaks				112,435	57,834	48,543	90			
Fairways & Beau Rivage (Excludes "all service areas")				1,881,670	897,437	745,305	2,200			
<b>AQUA - 2007 &amp; 2008 TOTALS &amp; PER-CUSTOMER DATA</b>				<b>19,557,743</b>	<b>9,952,765</b>	<b>8,371,522</b>	<b>13,091</b>	<b>\$1,494</b>	<b>\$760</b>	<b>\$639</b>
<b>AQUA PER-CUSTOMER DIFFERENCE RELATIVE TO UIC - 2007 &amp; 2008 PERIODS</b>								<b>42.6%</b>	<b>47.2%</b>	<b>49.1%</b>
<b>POINT OF COMPARISON - AQUA DOCKET W-218 SUB 319 - A 2009/2010 PERIOD RATE CASE</b>										
Aqua North Carolina	W-218 SUB 319	Incomplete	07/31/10							
All service areas, except below				25,952,130	9,976,389	8,754,759	12,764			
(Note: Case is currently in process at NCUC.)										
Fairways & Beau Rivage				2,725,429	966,002	808,137	2,468			
<b>AQUA - 2009 &amp; 2010 TOTALS &amp; PER-CUSTOMER DATA</b>				<b>28,677,559</b>	<b>10,942,391</b>	<b>9,562,896</b>	<b>15,232</b>	<b>\$1,883</b>	<b>\$718</b>	<b>\$628</b>
<b>AQUA'S 2009/10 PERCENT CHANGE FROM AQUA'S 2007/08 ORDER</b>								<b>26.0%</b>	<b>-5.5%</b>	<b>-1.8%</b>
<b>AQUA PER-CUSTOMER DIFFERENCE RELATIVE TO UIC - 2009 &amp; 2010 PERIODS</b>								<b>48.9%</b>	<b>30.0%</b>	<b>41.1%</b>

**NOTES**

- 1 Nero Utilities and Carolina Pines were merged into Carolina Water Service in 2009. Their B50 operations are included in W-354 Sub 324.
- 2 Transylvania Utilities (W-1012 Sub 12) only had one case in the period 2007 through 2010. In order to avoid distorting UIC data as between the periods 2007/08 and 2009/10, and comparative data as between UIC and Aqua NC, Transylvania was excluded from the above analysis. Its inclusion in one or the other comparative periods would have had an immaterial effect on the analysis.

Aqua America, Inc.  
762 W. Lancaster Avenue  
Bryn Mawr, PA 19010

LETTER TO SHAREHOLDERS  
[www.aquaamerica.com](http://www.aquaamerica.com)

March 1, 2011

Dear Shareholder:

2010 was a very successful year for Aqua America. The company achieved its 11<sup>th</sup> consecutive year of net income growth, successfully completed 23 acquisitions, invested more than \$300 million in infrastructure, received \$53.9 million in annualized rate awards and controlled costs to improve margins. 2011 is Aqua America's 125<sup>th</sup> anniversary and our 40<sup>th</sup> year on the New York Stock Exchange, and we look to continue our long-term strategy, which has provided the basis for our earnings growth.

The Board of Directors declared a quarterly cash dividend of \$0.155 payable on March 1, 2011 to all shareholders of record on February 17, 2011, a 6.9 percent increase in the first quarter dividend over the 2010 payment. Aqua America was cited as a dividend achiever by Mergent, which recognizes companies that have consistently grown dividends over the last decade. Aqua America has increased its dividend 20 times in the last 19 years.

Aqua America continued to expand its operations, acquiring 23 water or wastewater systems in 2010. The company's industry-leading growth-through-acquisition strategy in 2010 was concentrated in Texas, where it completed 10 acquisitions. In December, Aqua America announced a unique transaction: agreeing to purchase American Water's regulated Texas operations and to simultaneously sell all its Missouri regulated utility operations to American Water.

The company invested a record \$327 million in infrastructure improvements as part of its 2010 capital investment program. Capital expenditures were focused on improvements to our distribution network, including pipe replacement projects and plant upgrades to enhance water quality and service reliability for our customers, which also contributed to job creation and economic growth in our areas of operation. In 2011, Aqua America again plans to invest more than \$300 million in capital improvements.

During 2010, Aqua America subsidiaries received rate awards, infrastructure surcharges and pass-throughs that are projected to increase annualized revenues by approximately \$53.9 million. The company currently has \$26.6 million of rate cases pending before state regulatory bodies. Additionally, Aqua America's largest state subsidiaries are expecting to seek rate relief later this year that is expected to impact 2011 and 2012 results. The primary driver for these filings is the recovery of capital (infrastructure) investments and increased expenses since previous filings. The timing and extent to which rate increases might be granted by the applicable regulatory agencies will vary by state.

In 2010, the company worked diligently to access the capital markets at favorable interest rates, including borrowing \$70 million at 4.98 percent in June, and issuing \$141 million of tax-exempt bonds at a yield of 4.75 percent at its largest subsidiary, Aqua Pennsylvania. Additionally, S&P reiterated its A+ corporate credit rating for Aqua Pennsylvania. Aqua America's long-term debt now has a weighted average cost of 5.36 percent versus a weighted average cost of 7.20 percent at year end 2000. The ability to access low-cost financing to fund infrastructure improvements is a reflection of the company's financial strength. In 2011, the company seeks to lower its cost of debt for the 12<sup>th</sup> consecutive year.

Aqua America offers a commission-free dividend reinvestment and direct stock purchase plan that allows shareholders to reinvest their dividends at a 5 percent discount to the market price. If you would like a prospectus and application, please visit [www.aquaamerica.com](http://www.aquaamerica.com) or call 800.205.8314. Please read the prospectus carefully before you make a decision to invest.

Thank you.



Nicholas DeBenedictis  
Chairman and President

This release contains forward looking statements within the meaning of the Private Securities Litigation Reform Act of 1995, including, among others: our plans to continue our long-term strategy, the amount of planned capital investments and the effects of such investments, the timing and amount of potential revenue from rate cases, and the company's expectation to lower its cost of debt in 2011. There are important factors that could cause actual results to differ materially from those expressed or implied by such forward-looking statements including: general economic business conditions, unfavorable weather conditions, the success of certain cost containment initiatives, the timing and extent of rate awards, changes in regulations or regulatory treatment, availability and the cost of capital, the success of growth initiatives, and other factors discussed in our Annual Report or Form 10-K which is on file with the SEC. We undertake no obligation to publicly update or revise any forward-looking statement.



*Elaine F. Marshall*  
Secretary

North Carolina

EXHIBIT D

DEPARTMENT OF THE  
SECRETARY OF STATE

PO Box 29622 Raleigh, NC 27626-0622 (919)307-2000

Date: 3/22/2011

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**Corporation Names**

Name	Name Type
NC AQUA NORTH CAROLINA, INC.	LEGAL
NC HYDRAULICS, LTD.	PREV LEGAL
NC HYDRAULICS, LIMITED	PREV LEGAL

**Business Corporation Information**

<b>SOSID:</b>	0072603
<b>Status:</b>	Current-Active
<b>Effective Date:</b>	7/16/1965
<b>Dissolution Date:</b>	
<b>Annual Report Due Date:</b>	
<b>Citizenship:</b>	DOMESTIC
<b>State of Inc.:</b>	NC
<b>Duration:</b>	PERPETUAL
<b>Annual Report Status:</b>	CURRENT

**Registered Agent**

<b>Agent Name:</b>	CORPORATION SERVICE COMPANY
<b>Office Address:</b>	327 HILLSBOROUGH STREET RALEIGH NC 27603
<b>Mailing Address:</b>	327 HILLSBOROUGH STREET RALEIGH NC 27603

**Principal Office**

<b>Office Address:</b>	202 MACKENAN COURT CARY NC 27511
<b>Mailing Address:</b>	762 W. LANCASTER AVENUE BRYN MAWR PA 19010-3489

**Officers**

<b>Title:</b>	CHAIRMAN OF THE BOARD
<b>Name:</b>	NICHOLAS DEBENEDICTIS
<b>Business Address:</b>	762 W. LANCASTER AVENUE BRYN MAWR PA 19010
<b>Title:</b>	PRESIDENT
<b>Name:</b>	THOMAS ROBERTS
<b>Business Address:</b>	202 MACKENAN COURT CARY NC 27511

**Title:** VICE PRESIDENT  
**Name:** ROY H. STAHL  
**Business Address:** 762 W. LANCASTER AVENUE  
BRYN MAWR PA 19010

EXHIBIT D, PG. 2

Stock

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<b>Class</b>	<b>Shares</b>	<b>No Par Value</b>	<b>Par Value</b>
COMMON	10000	YES	N/A

This website is provided to the public as a part of the Secretary of State Knowledge Base (SOSKB) system. Version: 3066



Aqua North Carolina, Inc.  
202 MacKenan Court  
Cary, NC 27511

Thomas J. Roberts  
President and Chief  
Operating Officer

T: 919.653.5770  
F: 919.460.1788  
tjroberts@aquaaamerica.com  
www.aquanorthcarolina.com

June 23, 2010

Ms. Freda Hilburn  
Senior Financial Analyst  
North Carolina Utilities Commission  
4325 Mail Service Center  
Raleigh, NC 27699-4325

Re: Lynda Paxton's E-mail of June 21, 2010  
Country Woods East Wastewater Treatment Plant

Dear Ms. Hilburn:

Aqua North Carolina, Inc. (Aqua) received the e-mail from you on June 22, 2010, regarding Lynda Paxton's inquiry about Country Woods East wastewater treatment plant (WWTP). Each of her concerns are addressed below:

1. As stated in Ms. Paxton's e-mail, she did testify at Aqua's last rate case, W-218, Sub 274, at the customer hearing in Charlotte on October 28, 2008. Her testimony can be viewed in the transcript of the hearing on pages 123 through 130. These pages are attached for your convenience.

On January 26, 2009, Aqua filed a report addressing each customer service concern that had been testified to at each public hearing throughout the state. Ms. Paxton's testimony did not address customer service concerns, therefore, Aqua did not address her testimony in the report, we only identified the fact that she did testify.

2. Residents of Country Woods East have informed Ms. Paxton that Aqua is using frequent "pump and haul" process and that odors from the plant are unbearable. The e-mail states the waste is being pumped one to two times daily as compared to one to two times weekly compared to several years ago.

**Answer:** Aqua does not use pump and haul for the Country Woods East WWTP. We do haul sludge from the plant approximately one time per month. Depending upon the amount of sludge that is being hauled, there could be multiple trucks used by Aqua's sludge hauler and it may involve two or three trips in one or two consecutive days. For example, in May, sludge was hauled from the WWTP twice on May 18, 2010. On June 8, 2010, there were three trips made by the sludge hauler and on June 9, 2010, there were two trips made by the sludge hauler. Each of the lift stations throughout the system is cleaned/hailed approximately two times per year.

Page Two  
Ms. Freda Hilburn  
June 23, 2010

There could be emergency situations that would require sludge hauling trucks or equipment to visit the WWTP or lift stations more than the average time noted above.

Some homes in Country Woods East are located very close to the WWTP; therefore, Aqua does receive an occasional odor complaint from the residents at Country Woods East. These complaints have actually decreased in recent years due to the considerable amount of work Aqua has done, which includes adding odor control chemicals at the lift stations throughout the system that eventually feed into the WWTP.

3. Ms. Paxton refers to significant growth in the area served by this facility and it may be that the plant exceeds the limits of its treatment capacity.

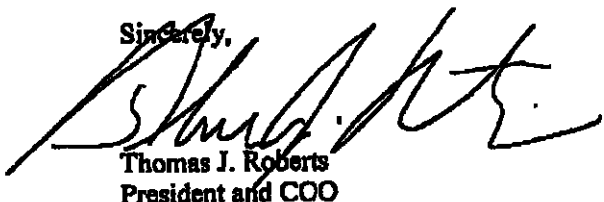
Answer: The current available treatment capacity for the Country Woods East WWTP is 510,000 gallons per day (gpd). In May 2010, the average flow at the WWTP was approximately 177,000 gpd. As you can see, we do not have a capacity issue.

4. Is the plant actively monitored by the Commission and on what schedule?

Answer: The Division of Water Quality (DWQ), NC Dept. of Environment and Natural Resources, monitors and inspects WWTPs at least once every year. Monthly reports are submitted and reviewed by DWQ for every WWTP Aqua operates (these are referred to as DMRs). These reports indicate whether the plant is operating in compliance or if there is an exceedance for that month. DMRs for Country Woods East WWTP show the facility has been in compliance throughout 2009 and 2010. The last inspection of the collection system at Country Woods East was performed September 22, 2009. The letter indicates "that the operation and maintenance activities initiated by the facility staff are commendable."

I hope this provides the information needed for a response to Ms. Paxton's inquiry. If you desire further information, please do not hesitate to contact me.

Sincerely,



Thomas J. Roberts  
President and COO

TJR/rt

EXHIBIT F

Permit	Owner	Facility	County	Region	basin	Receiving Stream
NC0078158	Aqua North Carolina, Inc.	Olde Beau Golf Club WWTP	Alleghany	Winston-S-	07-03	Laurel Branch (Laurel Cre
NC0058742	Aqua North Carolina, Inc.	Country Valley WWTP	Catawba	Moore	3-08-32	Hagan Fork
NC0063355	Aqua North Carolina, Inc.	Killian Crossroads WWTP	Catawba	Moore	3-08-32	Reed Creek
NC0060593	Aqua North Carolina, Inc.	Spinnaker Bay WWTP	Catawba	Moore	3-08-32	Mountain Creek
NC0056413	Aqua North Carolina, Inc.	Chatham Water Reclamation Fa	Chatham	Raleigh	3-06-06	Morgan Creek
NC0051314	Aqua North Carolina, Inc.	Cole Park Plaza Shopping Cent	Chatham	Raleigh	3-06-05	Cub Creek
NC0083925	Aqua North Carolina, Inc.	Salem Glen Subdivision WWTP	Davidson	Winston-S-	07-02	YADKIN RIVER
NC0083941	Aqua North Carolina, Inc.	Spring Creek WWTP	Davidson	Winston-S-	07-04	Fryes Creek
NC0034452	Aqua North Carolina, Inc.	Willow Creek WWTP	Davidson	Winston-S-	07-07	Abbotts Creek

Source of Schedule

<http://portal.ncdenr.org/web/wq/swp/ps/npdes>

Schedule Title at Source

Active Permits-CHW-20110301-DWQ-SWP-NPDES.xls

----- Forwarded Message -----

**From:** "Boysen, Tori" <Tori.Boysen@Prucarolinas.com>  
**To:** Ed Eilbeck <edeilbeck@yahoo.com>; Michael Amos <michaelab@northstate.net>  
**Cc:** Peter W Minges <pwminges@yahoo.com>  
**Sent:** Mon, February 21, 2011 10:40:53 AM  
**Subject:** RE: Aqua & Salem Glen

Ed- I will help where I can! I did not get the email though, it looks like there was a typo on my email address below. See below for my answers, all are approximate. Michael should be able to provide the rest.

Tori

Tori Boysen, Broker  
Chairman's Circle Gold Award Winner, 2005, 2006, 2007, 2008  
Marketing agent, Salem Glen Residential Village

336-659-3239 office  
336-345-3499 cell  
[tori.boysen@prucarolinas.com](mailto:tori.boysen@prucarolinas.com)

---

**From:** Ed Eilbeck [edeilbeck@yahoo.com]  
**Sent:** Monday, February 21, 2011 10:28 AM  
**To:** Michael Amos  
**Cc:** Peter W Minges; Boysen, Tori  
**Subject:** Fw: Aqua & Salem Glen

Michael - I think you would have greater accessibility to these answers to these questions than Tori.

Please help if you can.

Ed

----- Forwarded Message -----

**From:** Pete Minges <pwminges@yahoo.com>  
**To:** tori.boysen@purcarolinas.com  
**Cc:** Austin Coan <acoan@bellsouth.net>; Dan Bouchey <ddbouchey@aol.com>; Ed Eilbeck <edeilbeck@yahoo.com>; Maura Payne <paynem@rjrt.com>  
**Sent:** Mon, February 21, 2011 9:22:37 AM  
**Subject:** Aqua & Salem Glen

Tori,

In light of Aqua's latest application for a sewer rate increase, it would be helpful to obtain as much overall capacity and usage information about Salem Glen's waste treatment system as we can.

We're hopeful that you might be able to provide some of the information, and perhaps direct us to where we can find stuff you are not familiar with. Here's what we need ...

1. What is the capacity of our treatment plant? (I've seen/heard a range from 200,000 Gallons Per Day to as much as 500,000 GPD)
2. For how many total homes and non-residential users (ie., SGCC) is the plant size designed for?
3. Was the plant designed to accommodate any developments other than S.G.? (ie., Woodmont and/or any other nearby subdivisions)?

If so, what are the names of those additional subdivisions, and how many total homes, per subdivision, would they add to the S.G. total homes in #2?

WOODMONT 20 built, 75 potential  
SALEM GLEN 300 built, 475 potential  
THE HAMPTONS 10 built, 20 potential

4. As of now, how many homes have been built in S.G. and the other developments? We would need a count for each development.

SALEM GLEN 300  
WOODMONT 20  
THE HAMPTONS 10

5. How many homesites have not yet been built upon that will eventually be served by the SG sewage treatment plant? This should be a matter of simple subtraction, but if there are development plans for each subdivision, a copy of each plan that notes the vacant lot would be very helpful.

Approximately 240

6. There is one bit of forecast information that may well not be known, but anything you can offer will be informative. That is, over what time frame does/do the developer(s) expect to complete their respective subdivisions?

Lots in Woodmont and the Hamptons are complete.

If you have any questions, thoughts or concerns, please give me a call. I can explain what we have learned and why this information will be useful in our response to the Aqua challenge.

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