

FILE

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

2009 JUL 17 AM 10:47

In the Matter of the Application of Aqua)
Ohio, Inc. for Authority to Increase its)
Rates and Charges in its Masury Division.) Case No. 09-560-WW-AIR

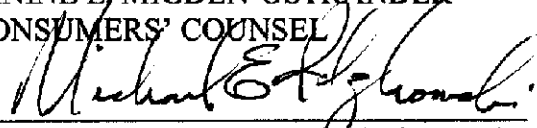
PUCO

**MOTION TO INTERVENE
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case where Aqua's proposed new rates will represent an increase of approximately 80.3% over current rates for residential customers.¹ OCC is filing on behalf of all the approximately 1,500 residential utility consumers of the Masury Division of Aqua Ohio Inc. ("Aqua"). The reasons the Public Utilities Commission of Ohio ("Commission" or "PUCO") should grant OCC's Motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL


Michael E. Idzkowski, Counsel of Record
Melissa R. Yost
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: (614) 466-8574
idzkowski@occ.state.oh.us
yost@occ.state.oh.us

¹ See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

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MEMORANDUM IN SUPPORT

This case involves the review of the reasonableness and lawfulness of Aqua's proposed rate increase of approximately 80.3% over current residential rates. OCC has authority under law to represent the interests of all the approximately 1,500 residential utility customers of Aqua's Masury Division, pursuant to R.C. Chapter 4911.

R.C. 4903.221 provides, in part, that any person "who may be adversely affected" by a PUCO proceeding is entitled to seek intervention in that proceeding. The interests of Ohio's residential consumers may be "adversely affected" by this case, especially if the consumers were unrepresented in a proceeding that will directly affect their water bills and household budgets. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the Commission to consider the following criteria in ruling on motions to intervene:

- (1) The nature and extent of the prospective intervenor's interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceeding; and

- (4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

First, the nature and extent of OCC's interest is representing the residential consumers of Aqua in order to ensure that Aqua's proposed rate increase is an accurate reflection of the utility's true costs and needs. This interest is different than that of any other party and especially different than that of the utility whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for consumers will include advancing the position that Aqua's rates paid by consumers should be no more than what is reasonable and lawful under Ohio law, for service that is adequate under Ohio law. OCC's position is therefore directly related to the merits of this case that is pending before the PUCO, the authority with regulatory control of public utilities' rates and service quality in Ohio.

Third, OCC's intervention will not unduly prolong or delay the proceedings. OCC, with its longstanding expertise and experience in PUCO proceedings, will duly allow for the efficient processing of the case with consideration of the public interest.

Fourth, OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. OCC will obtain and develop information that the PUCO should consider for equitably and lawfully deciding the case in the public interest.

OCC also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that OCC satisfies in the Ohio Revised Code). To intervene, a party should have a "real and substantial interest" according to Ohio Adm. Code 4901-1-11(A)(2). As the residential utility consumer advocate, OCC has a very real

and substantial interest in this case where the proposed overall rate increase, if approved, will nearly double current water bills for Masury residents.

In addition, OCC meets the criteria of Ohio Adm. Code 4901-1-11(B)(1)-(4). These criteria mirror the statutory criteria in R.C. 4903.221(B) that OCC already has addressed and that OCC satisfies.

Ohio Adm. Code 4901-1-11(B)(5) states that the Commission shall consider the “extent to which the person’s interest is represented by existing parties.” While OCC does not concede the lawfulness of this criterion, OCC satisfies this criterion in that it uniquely has been designated as the state representative of the interests of Ohio’s residential utility consumers. That interest is different from, and not represented by, any other entity in Ohio.

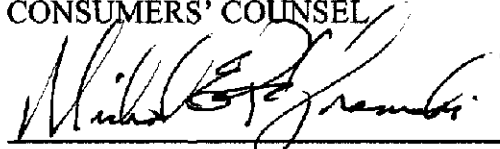
Moreover, the Supreme Court of Ohio confirmed OCC’s right to intervene in PUCO proceedings, in ruling on an appeal in which OCC claimed the PUCO erred by denying its intervention. The Court found that the PUCO abused its discretion in denying OCC’s intervention and that OCC should have been granted intervention.²

OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. On behalf of Ohio residential consumers, the Commission should grant OCC’s Motion to Intervene.

² See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

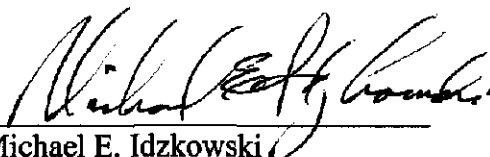
A handwritten signature in black ink, appearing to read "Michael E. Idzkowski", is written over a horizontal line.

Michael E. Idzkowski, Counsel of Record
Melissa R. Yost
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: (614) 466-8574
idzkowski@occ.state.oh.us
yost@occ.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene* was served on the persons stated below by regular U.S. Mail Service, postage prepaid, this 17th day of July 2009.



Michael E. Idzkowski
Assistant Consumers' Counsel

SERVICE LIST

John Jones
Sarah Parrot
Assistant Attorneys General
Public Utilities Section
Public Utilities Commission of Ohio
180 East Broad St., 9th Fl.
Columbus, OH 43266-0573

Mark S. Yurick
Chester Willcox & Saxbe LLP
65 East State St. Suite 1000
Columbus, OH 43215

Attorney for Aqua Ohio Inc.