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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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PUCO

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

**MEMORANDUM CONTRA AQUA OHIO, INC.'S
MOTION FOR APPROVAL OF WAIVERS OF VARIOUS APPLICATION
FILING REQUIREMENTS AND FOR TEST YEAR AND DATE CERTAIN
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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I. INTRODUCTION

On July 2, 2009, Aqua Ohio, Inc., ("Aqua" or "Company") filed its Notice of Intent to File an Application for an Increase in Rates (amounting to an increase of 80.8%) regarding Aqua's sale of water to its customers in its Masury Division. Also on July 2, 2009, Aqua filed its Motion for Approval of Waivers of Various Application Filing Requirements and for Test Year and Date Certain ("Motion"). The Office of the Ohio Consumers' Counsel ("OCC") today is contemporaneously and separately moving to intervene on behalf of all the approximately 1,500 residential consumers of Aqua, to protect their interest in reasonable rates (among other issues in the case).

As outlined below, OCC recommends that the Public Utilities Commission of Ohio ("Commission" or "PUCO") deny certain requests of Aqua for waivers of the Standard Filing Requirements (SFRs") set forth in Aqua's Motion regarding information related to the rate increase Aqua is proposing consumers pay for water. In part, Aqua seeks a waiver from the PUCO's requirement to file all or parts of Schedules B, C, D, F and S and supplemental information required under Chapter 2C.

Aqua also seeks tacit approval of its decision to not provide any information on Aqua's parent corporation, stating in its Motion, "For purposes of this filing requirements and waiver request, Aqua is interpreting total company to mean Aqua Ohio, Inc., the regulated entity in Ohio and all of its operating divisions, but does not include Aqua America, Aqua's parent corporation."¹ In addition, Aqua seeks approval of a proposed test year, January 1, 2008 through December 31, 2008, and a Date Certain of June 1, 2008.

¹ Aqua's Motion at Footnote 2.

The information required by the Standard Filing Requirements would well serve the PUCO Staff's interest in a full investigation of this Aqua proposal to substantially increase customers' rates. The required information would also serve the needs of interested parties who will review this request by Aqua for a significant rate increase during a time when Aqua's customers struggle in a dire economic situation. Accordingly, the Commission should deny Aqua's waiver requests, in part, as discussed herein.

II. STANDARD OF REVIEW

All applications requesting an increase in rates filed under R.C. 4909.18 must conform to the Standard Filing Requirements.² A waiver of the standard filing requirements shall only be granted upon a showing of good cause.³ In determining whether good cause has been demonstrated by the utility, the Commission shall consider the following:

- (i) Whether other information, which the utility would provide if the waiver is granted, is sufficient so that the commission staff can effectively and efficiently review the rate application.
- (ii) Whether the information, which is the subject of the waiver request, is normally maintained by the utility or reasonably available to it from the information which it maintains.
- (iii) The expense to the utility in providing the information, which is the subject of the waiver request.⁴

² See Ohio Adm. Code 4901-7-01.

³ See Ohio Adm. Code 4901-7-01, Appendix A, Chapter II, Paragraph A, Subparagraph 4 (c).

⁴ See *Id.*

III. LAW AND ARGUMENT

A. **OCC's Memorandum Contra Is Filed On Behalf of Aqua's Masury Division Customers and In Accordance With The Ohio Administrative Code, The Commission's Rules Of Procedure and PUCO Precedent.**

Ohio Adm. Code 4901-7-01 provides that, upon a showing of good cause, the Commission may grant a motion to waive specific provisions of the Standard Filing Requirements ("SFRs") if the motion is timely (filed before the application is filed). Ohio Adm. Code 4901-7-01 does not prohibit the filing of a memorandum contra to the motion for waiver.⁵

This Memorandum Contra by OCC is filed pursuant to the Commission's procedural rules, specifically, Ohio Adm. Code 4901-1-12(B)(1), which provides for any party to file a memorandum contra within 15 days of the service of a motion.⁶ OCC filed its Motion to Intervene in this proceeding on July 17, 2009. OCC's Motion to Intervene is, at the time of the filing of this Memorandum Contra, pending with the Commission, but as set forth in that Motion to Intervene, 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. Further, OCC has been a party to a prior rate case filed by Aqua⁷ and has a keen interest in access to Aqua information related to this most recent proposal to yet again increase consumers' rates.

As established in separate water rate case before the Commission involving a water company's requested waiver of a SFR requirement, intervening parties have

⁵ See Ohio Adm. Code 4901-7-01.

⁶ See Ohio Adm. Code 4901-1-12(B)(1).

⁷ *In the Matter of the Application of Aqua Ohio, Inc. for Authority to Increase its Rates and Charges in the Lake Erie Division*, Case No. 07-564-WW-AIR.

authority to oppose requested waivers of SFR requirements.⁸ In that case, the water company sought a waiver of a requirement of Ohio Adm. Code 4901-7-01, Appendix A, Chapter II, Paragraph (A) Subparagraph (6)(a), regarding the filing of direct testimony by utility personnel and other expert witnesses. The Commission stated, "The rule * * * contemplates that the Staff and *any intervening party* will have the information necessary to form an opinion concerning the utility's rate of return calculation prior to a staff report of investigation and any objections being filed."⁹ (Emphasis added.) Accordingly, as an intervening party, OCC has standing to oppose Aqua's request for waiver of the SFRs where the information requested to be waived is necessary to forming opinions regarding the Company's application.

B. Aqua's Motion For Waivers From Filing SFRs Should Be Denied Because Aqua Has Failed To Show Good Cause Why Waiver Should Be Granted.

1. The PUCO Staff can more effectively and efficiently review the rate application as it affects Aqua's customers if Aqua is not granted waivers from the SFRs.

The Applicant in this case is Aqua Ohio, Inc., not the Masury Division of Aqua Ohio. Therefore, adequate information on Aqua Ohio, not its Masury Division, is the necessary component of Aqua's application. A limitation of information specified in the SFRs to only information regarding Aqua's Masury Division will not allow the Staff and intervening parties such as OCC to effectively and efficiently review the Company's application.

⁸ *In the Matter of the Application of Ohio American Water Company To Increase Its Rates for Water and Sewer Service Provided to Its Entire Service Area*, PUCO Case No. 09-391-WS-AIR, June 3, 2009 Entry at Paragraph 8.

⁹ *Id.*

For example, the Company's Notice of Intent to File an Application For An Increase In Rates includes as attachments several "Sample Letters Sent to Public Officials in Trumbull County, Brookfield Township and Hubbard Township" that announce the Company's proposal to increase its overall rates by 80.8%. As justification for the proposed rate increase of over 80%, the letters state, "Some of the significant reasons rates are increasing include continued *infrastructure improvements* that enhance capacity, reliability, fire protection and water quality; increases *in wages, benefits and insurance*."¹⁰ (Emphasis added.). Meanwhile, Aqua's Motion requests a waiver of the requirement to file Schedule B-8 ("Water Data"), based on the Company's assertion that "[t]he Masury Division does not have a plant,"¹¹ and a waiver of Schedules C-9 and C-9.1, which require data on operation and maintenance payroll costs and a total company payroll analysis, on the basis that "[t]he Masury Division has no employees."¹² With no plant or employees, these costs for infrastructure improvement and wages, benefits and insurance must belong to Aqua Ohio, Inc. Because they are being used to justify, in part, a significant rate increase, Aqua Ohio, Inc. data documenting these costs should be provided to the Staff and intervening parties. Accordingly, the PUCO should deny any waiver request to provide information only on the Masury Division of Aqua Ohio in lieu of providing information regarding Aqua Ohio, Inc.

Aqua is a subsidiary of Aqua America, Aqua's parent company,¹³ and as Aqua states in its Motion, "Aqua's Masury Division is a very small territory consisting of

¹⁰ Aqua Ohio Water Company's PFN Exhibit 2, Page 2 of 11.

¹¹ Id. at Part A, Paragraph 3.

¹² Id. at Part A, Paragraph 4.

¹³ Id. at Footnote 2.

approximately 1,500 consumers.”¹⁴ It is or should be a matter of interest for those reviewing Aqua’s significant rate increase proposal to investigate whether the financial burden on Aqua’s Masury Division customers is appropriate, given its small size in the overall Aqua corporate structure, to ensure that Aqua’s Masury Division customers are not in any way subsidizing other Aqua Ohio Division or the parent company, Aqua America. Although the Commission has granted Aqua waivers of certain SFRs in the past, the Commission has also denied certain waiver requests by Aqua.¹⁵ Most importantly, past practices should not stand in the way of PUCO Staff, OCC and other interested parties in their analysis of the application, especially with regard to a water utility that is seeking to nearly double its water rates.

Aqua’s customers, including the residential consumers that OCC represents, have the right to investigate and understand that the rates that will result from this application are fair, just and reasonable, and that Aqua’s Masury Division customers are not paying to support other affiliates of Aqua Ohio, Inc. The PUCO Staff, OCC and other interested parties should have all of the total company information and data, including consolidated rate of return information, necessary to making a basic ratemaking determination as to whether Aqua’s customers are being fairly charged or being asked to subsidize other affiliates of Aqua Ohio, Inc. or Aqua America.

In addition to its objection, generally, to the waiver of necessary SFR information from Aqua, OCC lists the following specific objections to the waiver requests of Aqua regarding the following schedules:

¹⁴ Id. at Footnote 1.

¹⁵ See, for example, *In the Matter of the Application of Aqua Ohio, Inc., for Authority to Increase its Rates and Charges in The Lake Erie Division*, PUCO Case No. 07-564-WW-AIR, June 6, 2007 Entry.

Schedule B-8 (Water Data):

Although Aqua indicates that Masury does not have a plant, the issue of unaccounted-for-water (“UFW”) is of importance to the customers of the Masury Division. The issue of UFW was raised in the Staff Report in Case No. 00-713-WW-AIR, Page 45, filed 10/17/00, regarding the Masury water service. New plant that was added and that began operation in July 2000 may have had an effect on UFW levels since then. Hence, the water data is necessary in order to determine whether there has been any improvement since the last Masury case regarding the level of UFW. The level of UFW has an indirect effect on the amount of chemical and power expenses built into the proposed rates that Masury customers will be paying.

Schedules D-1,1 (Rate of Return Summary, Parent-Consolidated), D-2.1 (Embedded Cost of Short Term Debt, Parent-Consolidated), D-3.1 (Embedded Cost of Long Term Debt, Parent-Consolidated) and D-4.1 and D-4.2 (Embedded Cost of Preferred Stock, Parent-Consolidated):

As further explained above, the parent-consolidated (Aqua America) cost of capital data should be provided. Because there is no market-based cost of capital (equity) data for Aqua Ohio, the cost of capital analysis of this application will rely on other water companies comparable to the parent-consolidated Aqua America, rather than Masury or Aqua Ohio. In addition, there should be no cost associated with providing this important financial data because the data should be readily available to Aqua America.

Schedule D-5 (Comparative Financial Data):

It is not clear whether the waiver request is referring to Aqua Ohio, Inc. or Aqua America, but Aqua Ohio should have this information of its own operation readily available and should provide it.

Schedules F-1(Projected Income Statement – Total Company and Division, Current Rates), F-1A (Projected Income Statement, Proposed Rates-Total Company and Division, Current Rates), , F-2 & F-2A (Projected Jurisdictional Rate Base Summary, Current and Proposed Rates), F-2.2 & F-2.2A, (Projected Plant in Service by Major Property Grouping, Current and Proposed Rates), F-3 & F-3A (Projected Capital Structure, Current and Proposed Rates) F-4 & F-4A (Projected Statement of Changes in Financial Position-Total Company and Division):

Information regarding projected net earnings, jurisdictional rate base, capital structure, and changes in financial position on a total company basis, i.e., an Aqua Ohio, Inc., basis, would likely be more reliable than the same information for one service territory (Masury). Information in the above schedules is essential to determine the impact of the proposed rates on the financial position of the Masury Division and Aqua Ohio. If this information is not made available with the application, Staff and intervening parties will ultimately request it through data and discovery requests. Therefore, Aqua should file the information with its application as required by the Ohio Administrative Code.

Supplemental Information:

Item 46:

Since the impact of rate case expense could be significant given the small size of the customer base, the Company should provide this information to the Commission Staff and intervening parties.

Item 48:

Because the Masury Division is likely receiving services from the service company, the Company should be required to provide this information to the Commission Staff and intervening parties. Aqua provided this information to the Commission in Case No. 07-564-WW-AIR regarding its Lake Erie Division and should do so in this case. The contract with the affiliated service company could have been amended since June 2007 when this information was last submitted to the Commission in a rate case forum.

2. Aqua's Motion fails to demonstrate that the information required by the SFRs is unavailable.

While claiming that "the other information provided in the application will be sufficient so that the Commission can effectively and efficiently review the rate application,"¹⁶ Aqua fails to allege or demonstrate (except when referring to its lack of any plant or employees¹⁷) that the information required by the SFRs is not "normally maintained by the utility or reasonably available to it from the information which it

¹⁶ Motion for Waiver at Part A (See heading).

¹⁷ Motion for Waiver at Part A, Paragraphs 3 & 4.

maintains.”¹⁸ In fact, as to Schedules C-9, C-9.1, C-11.1, C-11.2, C-11.3, C-12.1, C-12.3, D-5, F-1, F-1A, F-2, F-2A, F-2.2, F-2.2A, F-3, F-3A, F-4, F-4A, S-4.1, and S-4.2, and information to be provided pursuant to Chapter 2 C, “Supplemental Information” Items 3-6, 13, 35, 46, and 47, Aqua offers that the information will be provided in response to data requests.¹⁹ Other information required by Schedules B-5.1, S-1, S-2.1, S-2.2, and S-2.3 is apparently available, but objected to by Aqua as “not relevant.”²⁰

It makes little sense to require Staff and intervening parties to request the information in data requests or discovery, if the information is available. Rather, Aqua should file the information with its application, as the Ohio Administrative Code prescribes.

3. Aqua fails to demonstrate that there would be added expense in providing the information required by the SFRs.

Aqua’s Motion claims, “The expense to provide the information subject to the waiver request is unreasonable.”²¹ However, after raising this claim, Aqua’s Motion subsequently fails to identify *any* amount of time or expense that will be necessary to produce *any* of the information required by the SFRs. Aqua’s Motion contains no discussion of the matter of added expense at all. Thus, Aqua’s Motion fails to support the third criterion for waiver of SFRs.

¹⁸ See Ohio Adm. Code 4901-7-01, Appendix A, Chapter II, Paragraph A, Subparagraph 4(c).

¹⁹ See Motion for Waiver, Part A, Paragraphs 4, 5, 6, 8, 9, 11, & 12.

²⁰ *Id.* at Paragraphs 2 & 10.

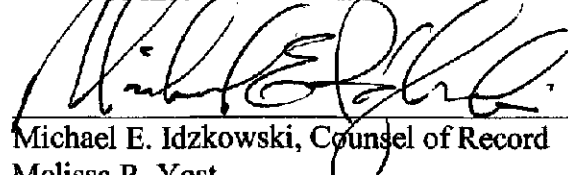
²¹ Motion for Waiver at Part A (See heading).

IV. CONCLUSION

In a case in which the Applicant, Aqua Ohio, Inc. is requesting a rate increase that nearly doubles the current water rates of the customers in Aqua's Masury Division service territory, and at a time when customers are faced with a dire economy, all relevant information should be available for a full investigation of Aqua's proposed rate increase. Aqua's Motion fails to show good cause why the Commission should grant a waiver from nearly all of the SFRs at issue. Accordingly, the Commission should deny Aqua's request, in part, as discussed above.

Respectfully submitted,

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CONSUMERS' COUNSEL

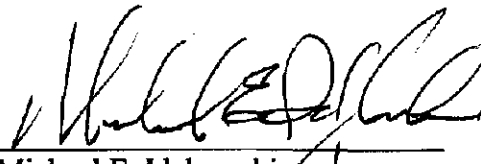


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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Memorandum Contra Aqua Ohio, Inc.'s Motion for Approval of Waivers of Various Application Filing Requirements and for Test Year and Date Certain by the Office of the Ohio Consumers' Counsel was served on the persons stated below via regular U.S. Mail Service, postage prepaid, this 17th day of July, 2009.



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